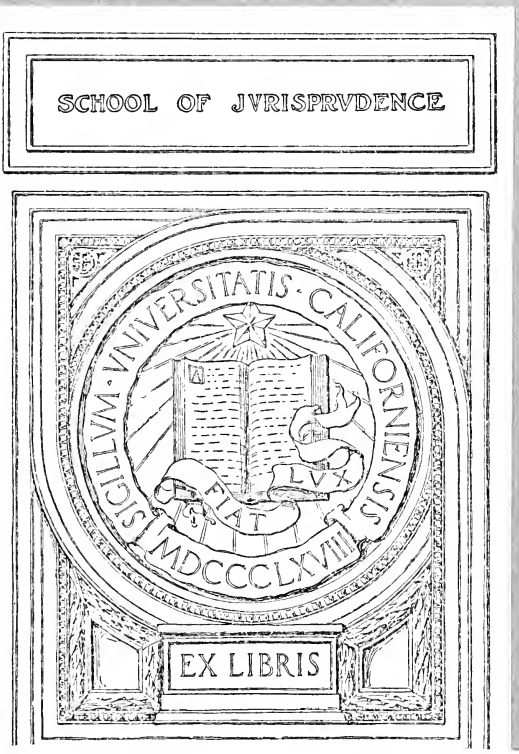

A

DISCOURSE

ON

THE STUDY

OF THE

LAW OF NATURE AND NATIONS,

BY

SIR JAMES MACKINTOSH, M. P.;

TOGETHER WITH A COLLECTED LIST OF

WORKS UPON INTERNATIONAL LAW,

A SKETCH OF THE AUTHOR'S LIFE, ETC.,

BY J. G. MARVIN.

"IT WOULD BE EXCEEDINGLY TO THE DISCREDIT OF ANY PERSON, WHO SHOULD BE CALLED TO TAKE A SHARE IN THE COUNCILS OF THE NATION, IF HE SHOULD BE FOUND DEFICIENT IN THE GREAT LEADING PRINCIPLES OF INTERNATIONAL LAW."

Chancellor Kent.

BOSTON:
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1843.

BOSTON:
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4 *Devonshire St.*

PREFACE.

We are aware that the duties of a compiler, or editor of another's production, are sufficiently humble; but if, by this means, any thing truly valuable is placed within the reach of the public, no one ought to shrink from the task. This admirable "Discourse" has passed through several *large* editions in England, and has ever been regarded by competent judges as the most finished and profound production that has been written upon the Law of Nature and Nations. When such ornaments of the Senate and the Bench, as Pitt, Canning, Loughborough, and Story, warmly commend a production, it needs no farther proof of its intrinsic value and importance. The entire writings of this accomplished scholar and profound philosopher, cannot be too extensively read or highly appreciated. We have thought that it might not be inappropriate to prefix to the "Discourse" a brief Biographical Sketch of Sir James Mackintosh, and a list of some of the more reputable works upon International Law; hoping that these few pages, in their present form, will not be wholly beneath the attention of the general reader, or of the Legal Profession.

J. G. M.

Cambridge, Oct. 20, 1843.

AUTHORS,

WHO HAVE WRITTEN UPON THE LAW OF NATURE AND NATIONS.

The following list contains some of the authors who have written upon international law. Though far from being complete, yet upon glancing at the succeeding pages, the reader will observe a noble array of the most profound jurists and elegant scholars of modern times, who have illustrated this branch of jurisprudence, so essential to be thoroughly understood by the Statesman, and so necessary for the preservation of national rights.

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SKETCH OF THE LIFE

OF

SIR JAMES MACKINTOSH.[1]

It would be impossible in the necessarily limited space appropriated to this Biographical Sketch, to give a very minute account of the life of this man, so distinguished for his genius, and elegant scholarship; but we must refer the reader who is desirous of pursuing the subject farther, to those works mentioned at the bottom of the page. Perhaps this sketch, though brief, in which we shall endeavor to present the prominent events of his life, and the peculiarities of his writings, may invite the perusal of some who cannot readily avail themselves of other resources.

Sir James Mackintosh was a native of Scotland, and descended from an ancient family of Mackintoshes, a clan of no inconsiderable importance in the Highlands, as early as the thirteenth century. He was born at Aldourie, a small town upon the banks of Loch Ness, on the 24th of October, 1765. His

[1] The following works have been consulted in the preparation of this sketch.

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father, Captain John Mackintosh,[1] was a soldier for more than twenty years, having entered the army quite young. Soon after the subject of this memoir's birth, his father was compelled to join the army; and being absent some eight or ten years, Sir James' early education chiefly devolved upon an excellent grandmother (with whom he and his mother lived) who early instilled into his mind a taste for reading. At ten years of age he was placed to school at Fontrose, where talents were developed that excited the highest anticipations of his friends. A quick perception, and tenacious memory, were the more marked characteristics of his juvenile mind; and so great was his proficiency at school, that at the age of fifteen he was sufficiently advanced to enter King's College, at Aberdeen. While at Fontrose, he was kindly noticed by a Mr. Mackenzie, who lent him Burnet's Commentary on the Thirty-nine Articles; the perusal of which first excited that inquisitive and speculative turn of mind that so eminently characterized him in subsequent years. He read with peculiar earnestness the article on "Predestination," which Mackenzie annotated upon by observing that "the Bishop had not given his own opinion upon the subject, but appeared to be of the opinion of the Greek Church, from which St. Austin departed." In a short memoir of himself, written while in India, Mackintosh alludes to this as follows:—"I was so profoundly ignorant of what the Greek Church was, and what St. Austin's deviations were, that the mysterious magnificence of this phrase had an extraordinary effect on my imagination. My boarding mistress, the schoolmaster, and the parson, were orthodox Calvinists. I became a warm advocate for free-will, and before I was fourteen, I was probably the boldest heretic in the country." About this time he read Plutarch's Lives, Echard's Roman History, Pope and Swift, and made his first literary effort by writing

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[1] Major Mercer makes honorable mention of him and an elder brother as follows:—"John Mackintosh was one of the most lively, good-humored, gallant lads I ever knew; and he had an elder brother of the name of Angus, who served in the regiment that encamped next to ours, who was a most intelligent man, and a most accomplished gentleman. Mr. M.'s grandfather saw his two sons return home at the end of the seven years' war, one with a shattered leg, and the other with the loss of an eye. As Pope says,

'Both gallant brothers bled in honor's cause
In Britain, yet while honor gain'd applause.'"

an Elegy upon the death of his uncle, General Fraser. Soon after this, he commenced a regular epic upon the defence of Cyprus by Evagoras, the materials for which he found in Rollin.

Through the assistance of some friends he obtained pecuniary aid, which enabled him, in 1780, to enter college. His predilection for metaphysical studies soon became apparent; for during his first winter's residence at college, he read attentively Priestly's Institutes of Nature and Revealed Religion, Beattie's Essay on Truth, and Warburton's Divine Legation. Among his classmates, at Aberdeen, was the celebrated Robert Hall,[1] to whom he became greatly attached, and between whom there subsisted, for many years afterwards, the strongest friendship. Their minds were in many respects similar; both were disputatious and tenacious of their opinions. These two young men were the stars of a small debating club[2] that they originated, and were "the observed of all observers."

The polemic and political controversies of the day were here mooted with astonishing ability for young men yet in their teens; and Mackintosh, in after life, affirmed "that he learned more from these discussions as to principles, than from all the books he ever read."

In 1782, Mackintosh fell violently in love with a beautiful Miss, "and exchanging Herodotus for the ladies who give their names to his books," wooed her in prose and verse, till the passion was reciprocated; and he now began to lay his plans for establishing himself in the world. This devotion to the shrine of beauty, which is more or less a universal concomitant of juvenile years, seems to have materially interfered with his regular studies, since it was continued for some time, and as he himself says, "was during six months almost the only occupation of my time." His highest ambition was to obtain a professorship at Aberdeen; and for this purpose he solicited the influence of his friends in furtherance of the object. However, before the close of his collegiate course, his pas-

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[1] During one winter, at college, Hall and Mackintosh met at five in the morning to construe Plato, Xenophon, and Herodotus. Their application seems to have excited the envy of some of the duller sort, and it was often observed, as these two friends passed, there go "Plato and Herodotus."

[2] Jocularly called the "Hall and Mackintosh Club."

sion for Miss S. was considerably abated, and with that abatement vanished the desire of filling a professional chair. In referring to this period, he says, "I left college with little regular and exact knowledge, but with considerable activity of mind and boundless literary ambition." He had now to choose a profession, and that of the bar was the one of his choice; but in consequence of the *res angustæ domi*, he was compelled to abandon all hope of this, and by the advice of his friends, medicine was the one determined upon.

In order the better to prosecute his medical studies, he set out for Edinburgh in 1784, which was at this time the residence of many distinguished men, — among whom were Smith, the famous political economist; Black, well known by his discoveries in chemistry; Robertson and Ferguson, the historians; Hutton and Dugalt Stewart; together with many lesser lights, whose names are emblazoned upon the pages of science and literature of the past age. Here was an ample opportunity for the display of talents of every kind; and we soon find Mackintosh among the combatants in the field. He became a disciple of Dr. Brown, who fancied he had made some new discoveries in medicine, and defended Brunonianism with great zeal. But though the Doctor's new theories seem never to have produced any great revolutions in pharmacy, yet the mental exercise necessary to sustain his new views, and combat opposition, made his disciples at least formidable in the war of words. However, medicine[1] never appears to have been a favorite study with Mackintosh, but general literature and the speculative sciences had for him more seductive charms; and however inconstant he may have been to the former, he wooed the latter with unabated ardor throughout a long life.

A few months after his arrival, he was elected a member of the Speculative Society,[2] in which were discussed literary, meta-

[1] His attendance upon medical lectures, while at Edinburgh, was not as regular as a true son's of Esculapius should have been, and it was laughingly said of him by the students, that he was "an *honorary* member of the class."

[2] Besides being a member of this, he also belonged to the "Royal Medical" and "Physical Societies," in all of which he was an active member. Before the "Royal Medical" he read an article upon "Intermittent Fever," and to the "Physical," "On the Instincts and Dispositions of Animals."

physical and political questions. This presented an opportunity for the full scope of his versatile genius, and he immediately became distinguished as an eloquent and acute debater. It was in discussions here, with a Thomas Addis Emmet, a Wild, a Gillies and a Laing, that he accustomed himself to take those bold and discursive views of political questions, practiced that close and logical style, and acquired that familiarity with the best writers of all preceding ages, which is apparent in the productions of his more mature years. His conversational powers also were of a high order; and being of an ardent temperament, he indulged rather freely in conviviality; which, together with his desultory method of study, alienated from him some of his nearest friends, who were fearful that his habits would lead him to unhappy consequences.

However, in 1787, he received his medical degree, and composed upon the occasion, a Latin thesis, "*De Actione Musculari.*" The ability with which he treated this subject was highly commendable, and excited the wonder of those who knew the indifference with which he had attended to his medical studies. Soon after taking his degree, he departed for London, where he arrived in the spring of 1788. He took up his residence at the house of a maternal relation, Dr. Fraser. Among the frequent visitors at his house, was a Miss Stuart, with whom Mackintosh became acquainted, and for whom he had a high regard. She was a young lady of respectable Scotch parentage, and was more distinguished for her amiability and intelligence, than for her beauty or wealth. Their acquaintance ripened into mutual esteem and affection, and they were clandestinely married a few months after they first met. The friends of both parties were much offended at this hasty marriage; and Mackintosh, at the age of twenty-four, was without any regular employment, without means, and encumbered with the expenses of a family. He contemplated a settlement at Bath, but for some cause, this plan was never carried into effect. Another project for establishing himself in the profession, was to go to St. Petersburgh as physician to his imperial majesty; but his pecuniary embarrassments, his dislike of the profession, together with a fondness for a London life, finally deterred him from going to the Continent.

About this time, his father dying, a small paternal inheritance at Kellachie descended to him, which was converted into money; but so great was his improvidence in relation to pecuniary matters, that he was soon again destitute. The Regency question was now the all-absorbing topic of the day, and Mackintosh partook of the general excitement. He made his first appearance as a politician, by writing a pamphlet in favor of the claims of the Prince of Wales, and seconded Fox in his efforts to establish that there was no difference, between the then state of the sovereign's[1] health and a natural demise. However, the partizans of the Prince failed in obtaining the ascendancy, in consequence of the recovery of the king; and the pamphlet, with the defeated party, was soon forgotten. His taste for politics was further evinced by the active part he took in promoting the claims of Horne Tooke to a seat in Parliament. His exertions brought him in contact with many prominent politicians, and he was a frequent guest of the candidate whose cause he had espoused.

In the latter part of 1789, he went to Leyden, where he remained some months perfecting himself in his medical studies, which he had again resumed. During his residence upon the Continent, he acquired a perfect knowledge of the French language, and was not an inattentive observer of the political excitements that preceded the French Revolution. Upon his return to London, he made an engagement with the publisher of the "Oracle," John Bell,[2] to superintend the department of foreign news, which afforded him a splendid opportunity to communicate his own views relative to Continental affairs, besides securing a good compensation for his services.[3] He now abandoned all hopes of following

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[1] In consequence of George the Third's derangement, Mackintosh was led to the investigation of the subject, which resulted in nearly completing a treatise upon Insanity, which was advertised, but never printed.

[2] Peter and Daniel Stuart, brothers of his wife, subsequently conducted the *Oracle* and *Morning Post;* the former a Pittite and the latter a Foxite paper. Parr informs us that Mackintosh wrote leaders for both these papers. Mackintosh was now intimate with Sheridan, Parr, Romilly, Hargrave, Sir Francis Burdett, and Charles Fox; a noble company of associates, for whose society his remarkable colloquial powers eminently qualified him.

[3] He was paid in proportion to the quantity of matter contributed; and one week, his fees amounting to ten guineas, Mr. Bell is reported to have

his profession for a livelihood, preferring "Coke and Lyttleton to Galen and Hippocrates," and entered his name at Lincoln's Inn.

In 1790, Burke's "*Reflections upon the French Revolution*" appeared. The views promulgated in this masterly performance, struck terror throughout the ranks of the friends of reform, and they were the more surprised, coming as it did from that man of transcendent abilities, who had hitherto rallied beneath the banner of freedom. His former friends, some of whom had struggled with him for the amelioration of man, by denouncing tyranny and advocating liberal principles, manfully grasped the thrown gauntlet, and prepared for the contest. The numerous replies that were made to the "Reflections," evinces the sensation that it produced among the friends of the French Revolution. The first antagonist that encountered Burke, was Miss Wolstonecraft; and then followed Paine,[1] Priestly and Price; but suddenly "a bolt was shot from amongst the undistinguished crowd, but with a force which showed the vigor of no common arm."

In April, 1791, the "*Vindiciæ Gallicæ*" of Mackintosh was published; which, for beauty of style, and elegance of diction, and for vehement and impassioned language, may, without disparagement, be compared with the "*Reflections.*"[2] When we consider that the "*Vindiciæ*" was written at a time when the author's family was indisposed, and his attention was mutually divided between it and the work; and that when a chapter was sent to the press the succeeding one was not written, and that it was produced by a young man of twenty-six, it must ever be regarded as a most wonderful

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said, "No paper can stand this." This exuberant week's labor was the cause of his being limited to a fixed salary for the future.

[1] Whilst Paine was preparing an answer to the "Reflections," the "Rights of Man," he accidentally heard that Mackintosh also was writing a reply, and sent him the following message by a mutual friend:—"Tell your friend Mackintosh that if he does not make haste, my work against Burke will be published; after which, nothing more on that subject will be read."

[2] When the "Reflections" appeared, Mackintosh eagerly read them, and conceived the bold design of writing a reply, though applying to himself that well-known line of the poet —

"Infelix puer, atque impar congressus Achilli."

He always had the highest veneration and esteem for Burke; which is shown by that courteous and respectful manner towards him, throughout the "*Vindiciæ;*" strikingly contrasting with the coarse vulgarisms of Paine.

production. It was eulogised by Fox and Sheridan, quoted in the Parliamentary debates, and gained the author as much celebrity, for a time, as was ever obtained by any publication.[1] It was, to the advocates of reform, what Machiavelli's "Prince" had been in preceding times — a manual, a text book, the expounder of a powerful party's views.

The following opinion of the author and his work, was thus expressed by the learned Dr. Parr :—"In Mackintosh I see the sternness of a republican, without his acrimony; and the ardor of a reformer, without his impetuosity. His taste in morals, like that of Mr. Burke, is equally pure and delicate with his taste in literature. His mind is so comprehensive, that generalities cease to be barren; and so vigorous, that detail itself becomes interesting. He introduces every question with perspicuity, states it with precision, and pursues it with easy, unaffected method. Sometimes, perhaps, he may amuse his readers with excursions into paradox; but he never bewilders them by flights into romance. His philosophy is far more just, and far more amiable, than the philosophy of Paine, and his eloquence is only not equal to the eloquence of Burke. He is argumentative without sophistry, fervid without fury, profound without obscurity, and sublime without extravagance."

The sale of the "*Vindiciæ*"[2] was unprecedented; three editions succeeding each other in almost the same number of months.

Although the occasion that produced it has passed, and many of its principles have been demonstrated to be Utopian, yet it may be said to have exerted a beneficial influence by showing the necessity of reforms, which have been and are still being made. As the book is now rather scarce, a short quotation from it may not be inappropriate or uninteresting. The character of Louis XIV. is thus vividly described: —

"The intrusion of any popular voice was not likely to be tolerated in the reign of Louis XIV.; a reign which has been so often celebrated as the zenith of warlike and literary splendor, but which has always appeared to me to be the consummation of whatever is

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[1] Mr. Canning observed of the Vindiciæ "that he had read it with as much admiration as he had ever felt."

[2] The price originally agreed to be paid for the manuscript, was £30; but as the demand for it became great, the publisher generously paid him thrice that sum.

afflicting and degrading in the history of the human race. Talent seemed in that reign to be robbed of the conscious elevation, of the erect and manly port, which is its noblest associate and its surest indication. The mild purity of Fenelon, the lofty spirit of Bossuet, the masculine mind of Boileau, the sublime fervor of Corneille, were confounded by the contagion of ignominious and indiscriminate servitude. It seemed as if the representative majesty of the genius and intellect of man were prostrated before the shrine of a sanguinary and dissolute tyrant, who practised the corruption of courts without their mildness, and incurred the guilt of wars without their glory. His highest praise is to have supported the stage-port of royalty with effect. And it is surely difficult to conceive any character more odious and despicable than that of a puny libertine, who, under the frown of a strumpet or a monk, issues the mandate that is to murder virtuous citizens, to desolate happy and peaceful hamlets, to wring agonising tears from widows and orphans. Heroism has a splendor that almost atones for its excesses! but what shall we think of him, who, from the luxurious and dastardly security in which he wallows at Versailles, issues, with calm and cruel apathy, his orders to butcher the protestants of Languedoc, or to lay in ashes the villages of the Palatinate? On the recollection of such scenes, as a scholar, I blush for the prostitution of letters; and as a man, I blush for the patience of humanity."

In 1795, he was admitted to the bar. A study of the technicalities of the law must have been sufficiently tedious to a mind accustomed to soar in the higher regions of philosophy, and we may well suppose, from his fondness for society and literature, that the old black-letter tomes were not very critically or frequently consulted. Yet he had a great desire for professional distinction, which stimulated him to master most of the minutiæ of practice. He became attached to a debating club, where he made the acquaintance of Mr. Scarlett (afterwards Lord Abinger,) Lord Tenterden and others, among whom his ready elocution and powers of disputation were duly appreciated. He was also, at this period, a contributor to the Monthly Review,[1] in which the following articles are known to have been from his pen: — Review of *Gibbon's Miscellaneous*

[1] Vide vols. 19, 20 and 21.

Works; also Mr. Roscoe's *Life of Lorenzo de Medici,* and a Critique upon Burke's "*Thoughts on a Regicide Peace.*" His remarks upon the latter are unrivalled specimens of elevated, dignified criticism; which was the cause of the author's receiving a polite invitation from Burke to visit him at Beaconsfield. The invitation was accepted, and these two great political antagonists were in conclave for several days, discussing questions upon which all Europe was divided in opinion. It is said, that at the end of three days,[1] Burke prevailed upon him to renounce some of the doctrines maintained in his "*Vindiciæ,*" which Mackintosh frankly acknowledged to some of his London friends. The following letter, written by him, to Burke, about this time, informs us of the estimation in which he held this celebrated philosopher and statesman, and also contains a recantation of some of his former political principles.

"From the earliest moment of reflection, your writings were my chief study and delight. The instruction which they contained, is endeared to me by being entwined and interwoven with the freshest and liveliest feelings of youth. The enthusiasm with which I once embraced it, is now ripened into solid conviction, by the experience and meditation of more mature age. For a time, indeed, seduced by the love of what I thought liberty, I ventured to oppose, without ever ceasing to venerate, that writer who had nourished my understanding with the most wholesome principles of political wisdom. I speak to state facts, not to flatter; you are above flattery; and, permit me to say, I am too proud to flatter even you. But I can, with truth, affirm that I subscribe to your general principles, and am prepared to shed my blood in defence of the laws and constitution of my country."

Burke's reply to this, shows us the admiration and high regard that he had for his quondam antagonist.

"Sir, — The very obliging letter with which you have honored me, is well calculated to stir up those remains of vanity that I had hoped had been nearly extinguished in a frame approaching to the dissolution of every thing that can feed that passion. But, in truth, it afforded me a more solid and a more sensible consolation.

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[1] Vide the Life of Mackintosh, by his son, vol. 1, p. 91, for some fragments of the three day's conversation.

The view of a vigorous mind, subduing, by its own constitutional force, the maladies which that very force of constitution had produced, is in itself a spectacle very pleasing and very instructive. It is not proper to say anything more about myself who *have been*, but rather to turn to you who *are*, and who probably will be, and from whom the world is yet to expect a great deal of instruction, and a great deal of service. You have begun your opposition by obtaining a great victory over yourself; and it shows how much your own sagacity, operating on your own experience, is capable of adding to your own extraordinary natural talents, and to your early erudition. As it is on all hands allowed that you were the most able advocate of the cause which you supported, your sacrifice to truth, and mature reflection, adds much to your glory."

In 1797, Mackintosh suffered the severest of domestic calamities — the loss of his inestimable wife — to whom he pays the following beautiful and pathetic tribute:[1]

"Allow me, in justice to her memory, to tell you what she was, and what I owed her. I was guided in my choice only by the blind affection of my youth, and might have formed a connection in which a short-lived passion would have been followed by repentance and disgust; but I found an intelligent companion, a tender friend, a prudent monitress, the most faithful of wives, and as dear a mother as ever children had the misfortune to lose. Had I married a woman who was easy or giddy enough to have been infected by my imprudence, or who had rudely or harshly attempted to correct it, I should, in either case, have been irretreviably ruined; a fortune, in either case, would, with my habits, have been only a shorter cut to destruction. But I met a woman, who, by the tender management of my weaknesses, gradually corrected the most pernicious of them, and rescued me from the dominion of a degrading and ruinous vice. She became prudent from affection; and, though of the most generous nature, she was taught economy and frugality by her love for me. During the most critical period of my life, she preserved order in my affairs, from the care of which

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[1] This was written in a letter to his friend Dr. Parr, who observes, "That he never received from mortal man, a letter, which, in point of composition, could be compared with it."

she relieved me; she gently reclaimed me from dissipation; she propped my weak and irresolute nature; she urged my indolence to all the exertions that have been useful and creditable to me; and she was perpetually at hand to admonish my heedlessness and improvidence. To her I owe that I am not a ruined outcast; to her whatever I am; to her what ever I shall be. In her solicitude for my interest, she never, for a moment, forgot my feelings or my character. Even in her occasional resentment, for which I but too often gave just cause, (would to God that I could recall these moments!) she had no sullenness or acrimony; her feelings were warm and impetuous, but she was placable, tender, and constant; she united the most attentive prudence, the most generous and guileless nature, with a spirit that disdained the shadow of meanness, and with the kindest and most honest heart. Such was she whom I have lost; and I have lost her when her excellent natural sense was rapidly improving, and moulding our tempers to each other; when a knowledge of her worth had refined my youthful love into friendship, before age had deprived it of much of its original ardor. I lost her, alas! (the choice of my youth and the partner of my misfortunes,) at a moment when I had the prospect of her sharing my better days. This, my dear sir, is a calamity which the prosperity of the world cannot repair. To expect that any thing on this side of the grave can make it up, would be a vain and delusive expectation. If I had lost the giddy and thoughtless companion of prosperity, the world could easily have repaired my loss; but I have lost the faithful and tender partner of my misfortunes; and my only consolation is in that Being, under whose severe, but paternal chastisement, I am cut down to the ground."

In 1799, having a limited practice at the bar, and as a means of enlarging his income, he announced to the public his intention of delivering a course of lectures upon "The Law of Nature and Nations," and made application to the Benchers of Lincoln's Inn, for the use of their Hall, for that purpose. Party spirit was still rife in all ranks of society; and these notable Benchers, fearing lest they should be the means of perpetuating Jacobinism, stoutly demurred to having their Hall prostituted to such an ignoble purpose. Pitt and Canning endeavored to quiet their apprehensions and alarms, but to no purpose; and the interference of Lord Chancellor Loughborough, at last put

a quietus upon their obstinancy, by ordering the Hall to be opened. The plan marked out by Mackintosh for the course of lectures, was indeed vast, and would never have been undertaken except by a mind conscious of its own boundless powers. He had given the subject much attention before submitting his plan to the world; and upon the publication of the *Introductory*, it was evident that he had laid every department of literature under contribution, to embellish and adorn this most valuable department of law. Without descending into the minutiæ of his subject, like his great predecessors Grotius and Puffendorf, he extracted the great governing principles — the philosophy — from the mass of undigested learning, and presented them in a most attractive form. "What was intricate, he disentangled; he confirmed what was doubtful; embellished what was dry; and illustrated what was obscure. Like the splendor of the golden bough that bore the Trojan hero through the darksome regions of the nether realms, the luminous glance of his genius darted through all the branches of the tree of knowledge, and gilded, with a new light, every leaf upon which it shone:"

"Aureaque ingenii per ramos aura refulsit."

Never was a course of lectures graced with a more distinguished auditory. Commoners and peers, lawyers and nonprofessionals, students of the Inns of Court, all crowded to Lincoln's Inn Hall to listen to this great expounder of International Law. The course occupied thirty-nine lectures; and to the great regret of every body, only the Introductory Lecture was ever prepared for the press.[1] He delivered them principally from notes, relying upon his great fund of learning for amplification and illustration.

Hazlitt has left us an exceedingly graphic sketch of the lecturer and the lectures: "In these lectures he showed greater confidence and was more than usual at home. The effect was more electrical and instantaneous; and this elicited a prouder display of intellectual riches, and a more animated and imposing mode of delivery. He grew wanton with success. Dazzling others with the brilliancy

[1] In writing to a friend, he says, "As to publication, that is a matter, which, if it ever takes place, you must wait a long time; several years will be necessary to digest and improve the work."

of his acquirements, dazzled himself by the admiration they excited, he lost fear as well as prudence — dared every thing — carried every thing before him. The modern philosophy, counterscarp, outworks, citadel and all, fell without a blow, by 'the whiff and wind of his fell doctrine,' as if it had been a pack of cards. The volcano of the French Revolution was seen expiring in its own flames, like a bonfire made of straw. The principles of reform were scattered in all directions, like chaff before the keen northern blast. He laid about him like one inspired; nothing could withstand his envenomed tooth. Like some savage beast got into the garden of the fabled Hesperides, he made clear work of it, root and branch; with white foaming tusks,

'Laid waste the borders, and o'erthrew the bowers.'

The havoc was amazing, the desolation was complete. As to our visionary sceptics and philosophers, they stood no chance with our lecturer; he did not 'carve them as a dish fit for the gods,' but hewed them as a carcass fit for hounds."

I have met with but two or three fragments preserved from his unpublished Lectures, which, I doubt not, will be quite acceptable to the reader, and we therefore present them:—

"In the examination of laws, I shall not set out with the assumption that all the wise men of the world have been hitherto toiling to build up an elaborate system of folly, a stupendous edifice of injustice. As I think the contrary presumption more reasonable as well as more modest, I shall think it my duty to explore the codes of nations for those treasures of reason which must have been deposited there by that vast stream of wisdom, which, for so many ages, has been flowing over them. Such a philosophy will be terrible to none of my hearers. Empirical statesmen have despised science, and visionary speculators have despised experience; but he who was both a philosopher and a statesman, has told us, 'This is that which will indeed dignify and exalt knowledge, if contemplation and action may be more nearly compared and united than they have hitherto been.' These are the words of Lord Bacon; and in his spirit, I shall, throughout these lectures, labor with all my might to prove that philosophical truth is, in reality, the foundation of civil and moral prudence. In the execution of this task, I trust I shall be able to avoid all obscurity of language. Jargon

is not philosophy; though he who first assumed the name of philosopher, is said by Lucian to have confessed that he made his doctrines wonderful, to attract the admiration of the vulgar. You will, I hope, prefer the taste of a greater than Pythagoras; of whom it was said, 'that it was his course to make wonders plain, not plain things wonderful.'"

In another fragment, he thus describes the connection of a classical education with morals; and who can read this eloquent and just encomium upon the writers of ancient times, without perceiving the correctness of his positions?

"I am not one of those who think, that in the system of English education, too much time and labor are employed in the study of the languages of Greece and Rome; it is a popular, but in my humble opinion, a very shallow and vulgar objection. It would be easy, I think, to prove that too much time can be scarcely employed on these languages by any nation which is desirous of preserving either that purity of taste, which is its brightest ornament, or that purity of morals, which is its strongest bulwark.

"You may be sure, gentlemen, that I am not going to waste your time by expanding the common-places of panegyric on classical learning. I shall not speak of the necessity of recurring to the best models for the formation of taste. When any modern poets or orators shall have excelled Homer and Demosthenes, and when any considerable number of unlettered modern writers (for I have no concern with extraordinary exceptions) shall have attained eminence, it will be time enough to discuss the question. But I entreat you to consider the connection between classical learning and morality; which, I think, as real and as close as its connection with taste; although I do not find that it has been so often noticed. If we were to devise a method for infusing morality into the tender minds of youth, we should certainly not attempt it by arguments and rules, by definition and demonstration. We should certainly endeavor to attain our object by insinuating morals in the disguise of history, of poetry, and of eloquence; by heroic examples, by pathetic incidents, by sentiments that either exalt and fortify, or soften and melt the human heart. If philosophical ingenuity were to devise a plan of moral instruction, these, I think, would be its outlines. But such a plan already exists. Classical education is that plan; nor can modern history and literature ever be substitu-

ted in its stead. Modern example can never imprint on the youthful mind the grand and authoritative sentiment, that, in the most distant ages, and in states of society the most unlike, the same virtues have been the object of human veneration. Strip virtue of the awful authority which she derives from the general reverence of mankind, and you rob her of half her majesty. Modern character never could animate youth to noble exertions of duty and of genius, by the example of that durable glory which awaits them after death; and which, in the case of the illustrious ancients, they see has survived the subversion of empires, and even the extinction of nations. Modern men are too near, and too familiar, to inspire that enthusiasm with which we must view those who are to be our models in virtue. When our fancy would exalt them to the level of our temporary admiration, it is perpetually checked by some trivial circumstance, by some mean association, perhaps by some ludicrous recollection, which damps and extinguishes our enthusiasm. They had the same manners which we see every day degraded by ordinary and vicious men; they spoke the language which we hear polluted by the use of the ignorant and the vulgar. But ancient sages and patriots, are, as it were, exalted by difference of language and manners, above every thing that is familiar, and low, and debasing. And if there be something in ancient examples not fit to be imitated, or even to be approved in modern times, yet, let it be recollected, that distance not only adds to their authority, but softens their fierceness. When we contemplate them at such a distance, the ferocity is lost, and the magnanimity only reaches us. These noble studies preserve, and they only can preserve, the unbroken chain of learning which unites the most remote generations; the grand catholic communion of wisdom and wise men throughout all ages and nations of the world. 'If,' says Lord Bacon, 'the intention of the ship was thought so noble, which carrieth riches and commodities from place to place, and consociateth the most remote regions in participation of their fruits, how much more are letters to be magnified, which, as ships, pass through the vast seas of time, and make ages so distant, participate of the wisdom, illuminations, and inventions, the one of the other!' Alas! gentlemen, what can I say that will not seem flat, and tame, and insipid, after this divine wisdom and divine eloquence? But this great commerce between ages will be broken

and intercepted; the human race will be reduced to the scanty stock of their own age, unless the latest generations are united to the earliest, by an early and intimate knowledge of their language and their literature. From the experience of former times, I will venture to predict, that no man will ever obtain lasting fame in learning, who is not enlightened by the knowledge, and inspired by the genius of those who have gone before him. But if this be true in other sciences, it is ten thousand times more evident in the science of morals."

In 1798, Mackintosh married a second time, and seems to have been equally as fortunate in his second as in his first choice.

The reputation that he acquired by delivering his Lectures, was of great assistance to him in procuring practice;[1] and he was frequently employed in arguing questions of international law before Committees of the House of Commons. One of his most distinguished efforts, as an advocate, was that made in defence of Peltier. This man fled from France during the stormy times of 1792, and supported himself in London by publishing a paper called L' Ambigu. In the first number of this paper, was an ode reflecting pretty severely upon Bonaparte; and at his instigation an action was brought against the editor, who employed Mackintosh to defend him. The trial came on before Lord Ellenborough; and an immense crowd assembled to learn what disposition would be made of the offending Frenchman.

The counsel for the defendant was eminently qualified to undertake the defence; and upon that occasion delivered a discourse that fully sustained his already enviable reputation, and which must ever unquestionably remain as one of the finest specimens of forensic oratory. It has, however, by some, been complained of as being too discursive, and too highly wrought for the occasion; and from others, it has received the highest encomiums.[2] It was trans-

[1] It has been said that his practice was always limited; but we learn from the most unquestionable authority, that during his last year at the bar, (and he was only a practitioner seven years) his fees amounted to more than £1200.

[2] Sir William Scott said "it was the most brilliant speech ever made at bar or in forum." Erskine, in speaking of it, says, "I shall always consider it as one of the most splendid monuments of genius, learning, and elo-

lated into French by Madame de Staël;[1] which extended the reputation of Mackintosh, already favorably known, throughout Europe. He however lost the case, and his client was convicted.

The extensive knowledge of international law, shown by Mackintosh in his Lectures, their brilliant success, and his abilities as an able and fearless advocate, evinced at the trial of Peltier, and upon other occasions, attracted the attention of Government; and he was regarded as a suitable individual to fill some one of the high Colonial offices. Accordingly, in 1803, he was appointed Recorder of Bombay; and upon assuming the judicial robe, received the honor of knighthood. Two considerations induced him to accept this appointment; the one, in order that he might accumulate a competency for his somewhat numerous family, and the other, that he might prosecute his literary pursuits less uninterruptedly than at home, amidst political excitements. The year following his appointment, he set out for India, accompanied by his family, "multa et preclara minans of legal, philosophical, and historical works." During a residence of eight years in the East, he produced no work of any great size; yet we are not to infer from this that he was inactive or indolent. Neither did he extend his researches into Oriental literature, as his great predecessor, Sir William Jones, had done; but spent his leisure moments in reading and examining historical and metaphysical works, the results of which, in subsequent years, he, in part, gave to the world in his Abridged History of England, and in a Dissertation upon the Progress of Ethical Philosophy.

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quence." Lord Ellenborough, in his charge to the jury, pronounced it to be "the most eloquent oration he had ever heard."

[1] Madame de Staël thus speaks of the great consolation it afforded her while in exile. "C'est dans ces jours orageux que je reçus le plaidoyer de M. Mackintosh, là je lus ces pages ou il fait le portrait d'un Jacobin, que s'est montré terrible dans la revolution contre les enfans, les vieillards, et les femmes, et qui se plie sur la berge du corse, qui lui ravit jusqu' à la moindre part de cette liberté pour laquelle il se pretendoit armé. Ce morçeau de la plus belle eloquence m'emut jusqu' au fond de l'âme. Les ecrivains superieurs peuvent quelquefois, a leur insçu, soulager les infortunés, dans tous les pays, et dans tous les temps. La France se taisait si profondement autour de moi, que cette voix, que tout a coup repondoit à mon âme, me sembloit descendue du ciel — elle venoit d'un pays libre." — *Dix Années d' Exile.*

Having learned the German and Italian languages, during his residence abroad, he read most of the metaphysical works in the former, and many of the poets and better prose writers in the latter; besides all of the new readable books of England and France. He had also an extensive correspondence with men of letters, at home, and on the Continent; which, together with his judicial duties, occupied the greater part of his time. He sustained, while abroad, his high reputation as a scholar, and the character of an upright and fearless judge. He was at great pains to inform himself of the peculiarities of the people among whom he was placed to administer justice; and in his opening address to the jury of Bombay, "he compared himself to a newly appointed physician in a hospital, who would first examine the books of the establishment, in order to make himself acquainted with the complaints that were most frequently to call for cure."

"The prevalence of perjury is, perhaps, a more certain sign of the dissolution of moral principle, than other more daring and ferocious crimes, more terrible to the imagination; and of which, the immediate consequences are more destructive to society. Perjury indicates the absence of all the common restraints which withhold men from crimes. It supposes the absence of all fear of human justice, and bids defiance also to all human laws; it supposes also, either a contempt for public opinion, or, what is worse, a state of society which has ceased to brand with disgrace actions that ought to be infamous; it is an attack on religion and law in the very point of their union."

A case of perjury very soon occurring, he gave the natives an earnest of what his future course would be, relative to this crime. Upon a trial of two individuals for murder, an Indian woman was the principal witness, and her testimony before the coroner was directly contradictory to that subsequently given. During the trial, the Court asked her "if she thought there was any harm in false swearing?" she replied "that she had understood the English had a great horror of it, but that there was no such horror in her country." She was sentenced to five years imprisonment; during which period, she had to stand once a year in the pillory, in front of the court-house, with labels on her breast and back, explanatory of the crime of which she had been guilty, and of the resolution of the Court to adopt the most rigorous means for the extirpation of this offence.

Sir James' policy, at Bombay, was to ameliorate the rigors of the law; and a judicial experience of seven years, proved that the plan worked well, although he has been censured for being too lenient in the following case:—Two native officers had agreed to waylay and assault two Dutchmen; and their probable intention was to commit murder. The prisoners, expecting to receive the sentence of death, had furnished themselves with knives, and resolved to sacrifice the sentencer; but their intention was most opportunely discovered, and the Court took occasion to make to them this eloquent address:—

"It has been my fate, in this place, to be obliged to justify the lenity, rather than the severity of the penalties inflicted here. I think it is likely to continue so; for I have more confidence in the certainty, than in the severity of punishment. I conceive it to be the first duty of a criminal judge, to exert and to strain every faculty of his mind to discover, in every case, the smallest possible quantity of punishment that may be effectual for the ends of amendment and example. I consider every pang of the criminal, not necessary for these objects, as a crime in the judge. I was employed (addressing himself to the culprits,) in considering the mildest judgment which public duty would allow me to pronounce on you, when I learned, from undoubted authority, that your thoughts towards me were not of the same nature. I was credibly, or rather certainly informed, that you had admitted into your minds the desperate project of destroying your own lives at the bar where you stand, and of signalizing your suicide by the previous destruction of at least one of your judges. If that murderous project had been executed, I should have been the first British magistrate who ever stained with his blood the bench on which he sat to administer justice. But I could never have died better, than in the discharge of my duty. When I accepted the office of a minister of justice, I knew that I ought to despise unpopularity and slander, and even death itself. Thank God, I do despise them; and I solemnly assure you, that I feel more compassion for the gloomy and desperate state of mind which could harbor such projects, than resentment for that part of them which was directed against myself. I should consider myself as indelibly disgraced, if a thought of your projects against me were to influence my judgment."

They were sentenced to twelve months imprisonment.

As a Vice-Admiralty Judge, his decisions were governed by that high and liberal policy which influences the judgments of those deeply imbued with correct views of international law; and he claimed the same independence for the Admiralty, as the Courts of Common Law assert.

During his residence in the East, he founded the Bombay Literary Society; made several valuable communications to the Asiatic Register; and assisted Buchanan in his valuable work upon India. In 1811, on account of indisposition, he obtained permission to return to England; without having fully attained the accomplishment of either of the designs for which he accepted the judgeship. He however received from the East India Company a pension of £1200 a year, and was appointed Professor of Law and General Polity, in the East India College,[1] near London. In 1813, he obtained a seat in Parliament; and continued to represent here various boroughs during the remainder of his life. In the House, he usually voted with the Whigs, but was never an ultra party-man. On questions of Foreign Policy and International Law, on the Alien Bill, on the Liberty of the Press, on Religious Toleration, on the Slave Trade, on Reform in Parliament, on the Right of the Colonies to Self-Government, Sir James took an active and efficient part; and was always found supporting that side which most favored the progress of liberal principles, civilization and happiness. A reform in the Criminal Law was a subject he had long meditated upon; and uniformly advocated its necessity with his great compeer, Sir Samuel Romilly. Upon the death of the latter, this branch of Legal Reform devolved upon Sir James; and as chairman of a committee of the House of Commons, he introduced several bills which succeeded in erasing from the statute-book seven offences that had previously been punished with death. The following extract from one of his speeches, shows the comprehensive and enlarged views that he had upon the subject.

"If a foreigner were to form his estimate of the people of England from a consideration of their penal code,[2] he would undoubt-

[1] While Professor in this college, he re-delivered his course of Lectures upon the "Law of Nature and Nations."

[2] There were more than a hundred offences, at that time, which the laws of England declared were punishable with death; upon twenty of which, only, that punishment was ever inflicted.

edly conclude that they were a nation of barbarians; that we were savage in our threats, and yet were feeble in our execution of punishments; that we cherished a system which in theory was odious, but which was impotent in practice from its severity; that in cases of high treason, we involved innocent children in all the consequences of their father's guilt; that in cases of corruption of blood, we were even still more cruel, punishing the offspring when we could not reach the parent; and that on some occasions, we even proceeded to wreak vengeance upon the bodies of the inanimate dead. If the same person were told that we were the same nation which had been the first to give full publicity to every part of our judicial system; that we were the same nation which had established the trial by jury; which, blamable as it might be in theory, was so invaluable in practice; that we were the same nation which had found out the greatest security which had ever been devised for individual liberty, the writ of habeas corpus, as settled by the Act of Charles II.; that we were the same nation which had discovered the full blessings of a representative government, and which had endeavored to diffuse them throughout every part of our free empire, he would wonder at the strange anomalies of human nature, which could unite things that were, in themselves, so totally incompatible."

One of his late speeches was upon a Bill relative to anatomical dissections; upon which so much sickly sentiment exists in the world. The enlightened reader cannot fail to coincide with the views that Sir James takes in the following extract, as well as admire the earnestness with which he advocates the necessity of facilitating, rather than impeding anatomical investigations.

"Allow me to illustrate, by an imaginary case, the opposite effects of continuing to bar up, and of trying to widen, the only access to anatomical knowledge. If we were told, that in some desert region of Central Africa, it was the practice of a tribe of savages to put to death, annually, a certain number of their own sick and wounded, we should surely listen to the story with a hope to find it false. But if it were added, that these murders were perpetrated, not by the instantaneous and merciful operation of the sword, the pistol, or the axe, but by a lingering torture for months or years, we should require the strongest evidence to induce us ever to listen to such a charge against cannibals themselves. If we were told

that we were ourselves chargeable with equal barbarity, should we not cry out with the Syrian of old, 'is thy servant a dog, that he should do this thing?' But let us look at home. Let us not suffer ourselves to be paid in words, which, as was sharply and sagely said, 'are the counters of wise men, and the money of fools.' What is the substantial difference between the supposed barbarity in Africa, and the legal impediments to anatomy in Great Britain? In proportion to every degree in which anatomy declines, and medicine sinks, an additional number of human lives must be cut short. If the healing arts preserve life, their decay must destroy it. That their improvement has contributed to that prolongation of its average duration, which has taken place during the last half century, is what nobody but the most extravagant dealers in common-place paradox will venture to dispute. The main length of life chiefly depends on the treatment of children; and the decline of medical science, must be attended, in its very beginning, by a real, though not nominal, massacre of infants. If, indeed, it were to kill at a blow, it might be a blessing to many. But its victims will die so slowly, none can call it murder. The bungling surgeon will make his instrument a means of more cruelty than the tomahawk; the ignorant physician will kill only by the protracted torture of disease. Let every man who calls out law, or prejudice, against dissection, consider whether he does not do his utmost to abate the means of lengthening life; and, (what is far more important,) of alleviating misery. Let him deeply reflect, whether an inconsiderate word may not make an orphan; and an inflamatory sentence may not cause unspeakable anguish to hundreds. What a fearful responsibility does he incur to all those who may suffer from the blow he has struck against the healing arts!

"I should be most painfully perplexed, if I thought myself, in this case, reduced to the sad necessity of choosing between the means of relief to bodily suffering, and the discipline which cultivates our moral feelings. I am not among those who underrate the rites of sepulture; still less the regard for the remains of the dead, which has prompted mankind, in every age, to hold those rites sacred. I believe that such a regard is indispensable from affection towards the living. As the cannibal feeds his ferocity by vindictively devouring the flesh of his enemies, so, it seems to me, funeral honors may be said, in some measure, to return and replenish those sacred

fountains of kindness and compassion from which they flow. But I will not believe that the moral culture of man is at variance with his bodily welfare. I am convinced that inquiry will discover means, sanctioned by the experience of other countries, by which, while the noble science of anatomy, and the beneficent arts of medicine and surgery are preserved among us, the alarms of affection may be appeased, and the sanctuary of the grave rendered more inviolable. I believe that a plan may be found, which will spare the feelings of every known or discoverable person; and I conceive that to require more, would be fantastic extravagance. I believe, with equal confidence, that if things go on as they now threaten, we shall close the better part of the means of instruction in the medical science; but that a miserable remnant must still be scantily supplied by that system of clandestine and contraband disinterment, which shocks the heart of the mourner, degrades science, as well as renders its profession odious, and becomes, like smuggling and poaching, a school in which men are fitted for the worst crimes."

For many years, he had been collecting materials for a history of England; and shortly after his return from India, he announced to the public his intention of writing the same, and solicited access to public and private libraries, which was readily granted. For this purpose, also, he visited the Continent, and obtained a mass of information, which, unquestionably, in his hands, if his attention had not been directed to too many objects, would have been wrought into the most philosophic and valuable history that the world had ever seen.[1] His fondness for society, however, in which he pre-eminently shone, his attention to politics and general literature, engrossed so much of his life, that he went to his grave with vast projects half accomplished. He however made an abridgment of his history, in two volumes, which may be found in Lardner's Cyclopædia; giving us a foretaste of what he was capable of doing as a historian. His object, he informs us, in the two published volumes, "was to give all the information which men of different pursuits, and of little leisure, may think it necessary to have always within their reach;" and he very modestly styles the work a Manual.

[1] The collection of materials for his great historical work, amounted, at his death, to fifty manuscript volumes.

This abridgment has great merits, and must *remain* a standard work upon that portion of English history of which it treats.[1] He was a pretty regular contributor to the Edinburgh and Monthly Reviews, and furnished a Dissertation upon Ethical Philosophy for the Encyclopædia Britannica. In addition to the works that have been mentioned, he wrote a life of Sir Thomas More; Fragment of the History of the Revolution of 1688; which, together with his speeches in Parliament, comprise the greater part of his works. Mackintosh has been censured by some, for his indolence, and for having produced so little; as though quantity was the criterion by which a man's talents were to be estimated. But if all writers had written with his care, and infused the soul of true philosophy, like him, into their productions, there would doubtless be many authors of neglected or forgotten tomes, who would now be an honor to their country, and a blessing to the world.

As a writer, Mackintosh has less originality than many; but no one was ever better endowed than he, with the faculty of abstracting from the mass of human learning, everything that could elucidate or beautify whatever subject he undertook. The transformation that the material underwent in the laboratory of his mind, was like that of the precious metals, in shapeless masses carried into a mint, and coming forth correctly weighed, and beautifully stamped. He had extended his researches into every field, both ancient and

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"I scarcely know two volumes, from which, considering their depth of thought, the simplest mind will be apt to carry off more instruction, nor from which the most instructed minds, if I may judge of such a mental class, would be likely, considering the manual and popular object of the work, to carry off more sound and pleasant impressions." — *Bulwer.*

"I think the History a noble one; perhaps I never read one with equal gratification. The author knows on what part of history to throw the strongest light! he judges past ages with discrimination and candor, enters into their spirit, and knows the significance and actions in different stages in society." — *Channing.*

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modern, of philosophy, poetry and history; and from each had culled the choicest flowers, which were regularly classified in the mind's herbarium, and could be easily referred to upon any desired occasion. Indeed, his memory was wonderful. Among the classic authors, Cicero was his favorite; whom he had almost literally committed to memory. The English prose writers, for whom he had the greatest fondness, were Lord Bacon, Hooker, Milton, Locke, Hartley, Barrow, Jeremy Taylor, Swift, Addison, Paley and Burke.

As a politician, he never suffered himself to be carried away with party zeal; but was guided by a cool and deliberate judgment, that convinced every one of his integrity, and rendered his support of a measure peculiarly desirable to his political friends.

"If he had been arrogant and grasping, if he had been faithless and false, if he had been always eager to strangle infant genius in its cradle, always ready to betray and to blacken those with whom he sat at meat, he would have passed many men, who, in the course of his long life, have passed him; but, without selling his soul for pottage, if he only had had a little more prudence for the promotion of his interest, and more of angry passions for the punishment of those detractors who envied his fame and presumed upon his sweetness, if he had been more aware of his powers, and of that space which nature intended him to occupy, he would have acted a great part in life, and remained a character in history."

As a parliamentary debater, he was of the highest class. His talent was not that of ridicule and sarcasm, calculated to excite a roar from the lobbies, and perhaps sway the votes of a few thoughtless members, but of the grave and deliberative kind, adapted to important measures, that require depth of thought, and sagacity of judgment, to grapple with and conquer. He seldom spoke without a thorough knowledge of his subject, and then not to the house alone, but to the world. He has been censured for being too philosophical in his speeches, for shooting beyond the capacity of a common arm, for using artillery when small arms would have done sufficient execution; but this has ever been the complaint of a certain class, who skim lightly over subjects, against those who fathom and master by deep reflection, and study questions beyond the calibre of ordinary minds. Such a talent, as his, every sensible man would aim to acquire. This is the kind of

talent that Burke displayed before a portion of the House of Commons, while the alimentative part of his associates found it more agreeable to be absent. This is the kind of talent that Brougham displayed in some of his profound speeches, amidst the coughs and noise of the senseless part of the House, who brought no other qualification for M. P., than the influence of some landed aristocrat.

As a metaphysician, Mackintosh had, it is true, some views peculiar to himself; and what writer upon morals and metaphysics has not had, upon this most unsettled of all branches of human learning?[1] From the days of Aristotle, to the present time, no one sect, or writer, has been so completely orthodox, but that some have seceded from him; and the most canonical writer in one age, is entirely discarded in the next. Of this much, we are certain, that he has treated with great candor those writers who differ from him; and as it respects the historical part of his lucid, vigorous, and ornate Dissertation, there can be but one opinion. It is to be regretted that he ever connected himself with politics or parties, which consumed so great a portion of his maturer years; during which time, he might have produced something more worthy of himself and all future time.[2]

As a kind and affectionate husband, as a good and a virtuous citizen, as an encourager of talent in the aspiring young, no man ever surpassed the subject of this sketch.

"Sir James Mackintosh was in person well made, and above the middle stature. He was regularly handsome in his youth, and even in the decline of life; and under afflicted health, was a person of prepossessing and commanding appearance. His countenance had a changeful mixture of gay and grave expression, a shrewd-

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[1] Moral Philosophy he had always studied with great enthusiasm. — "Mackintosh's genius was best adapted for metaphysical speculation; and if he had chosen Moral Philosophy, he would probably have surpassed every living writer." — *Robert Hall.*

[2] In his declining years, he bitterly reproached himself for having engaged in multifarious pursuits; and upon his induction into the office of Rector of the University of Glasgow, "he warned the students against the perplexity of manifold employments, and earnestly recommended the concentration of their minds upon some one great object."

ness combined with suavity, that heightened and accorded with the charm of his conversation."

He had, for many years, labored under an affection of the liver; but the immediate cause of his death originated in an accident. One day, whilst at dinner, he swallowed a small fragment of a chicken bone; which, with some difficulty was removed; producing a slight laceration in his throat. This superinduced an inflammation, that subsequently extended to the vertebræ of the neck; occasioning severe pains in his head, shoulders and limbs, and completely unsettling his general health; which he never regained. A few days before his death, the pains ceased; and upon May 30, 1832, he died, surrounded by anxious friends, and in the possession of all his faculties; firmly believing in a happier and a better world.[1]

Thus died an accomplished orator, an impartial judge, a profound metaphysician, a brilliant scholar, and a christian. In reviewing his life, we discover an individual rising from the humbler walks of society, without fortune; resolutely braving in early years the sea of adverse circumstances, but ever guided by the highest morals and most ennobling sentiments; who attained the proudest seat amidst "England's intellectual peerage;" by whose faults let us profit, and whose superior excellence let us strive to imitate.

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[1] His death was universally deplored at home and abroad. — "L' Angleterre a perdu un vertueux citoyen; la litérature un historien profond et philosophique; la jurisprudence un reformateur éclairé; le parlement un orateur dont l' eloquence empruntait toute sa force à la raison et à la justice; l' humanité enfin un defenseur zélé de ses droits et de ses interêts. Il était eminemment Anglais par son patriotisme, et cosmopolite par l' absence des prejugés nationaux." — *A. W. Schlegel.*

SPEECHES, &C., OF SIR JAMES MACKINTOSH.

The following are some of the Forensic, Parliamentary, Literary, Philosophical and Historical Works of Sir James Mackintosh:

A Pamphlet on the Regency Question, 1789.
Vindiciæ Gallicæ, 1 vol. 8vo., 1791.
Life of Sir Thomas More, (in the first volume of "The Lives of British Statesmen.")
Dissertation on the Progress of Ethical Philosophy.
Abridged History of England, 2 vols.
Fragment of the History of the Revolution of 1688, (a posthumous publication.)
A Discourse on the Study of the Law of Nature and Nations.

The following contributions to the *Edinburgh Review*:—

Vol. 22, Review of the Poems of Rogers.
" " " of Madame de Staël's "De L'Allemagne."
" 24, Reflections on France.
" 25, Review of Wraxall's Memoirs.
" 27, Character of Lord Bacon.
" 34, An Article upon Parliamentary Reform.
" 36, Review of Stewart's Discourse on the Progress of Metaphysical Science.

In the *Monthly Review*:—

Vol. 20, Review of Gibbon's Miscellaneous Writings.
" " " of Roscoe's Life of Lorenzo de Medici.
" 21, " of the Thoughts on a Regicide Peace.

Transactions of *The Literary Society* of Bombay:—

Vol. 1, A Discourse before the Literary Society of Bombay.
" " Comparative Vocabulary of Indian Languages.
Several articles in the *Asiatic Register*.
Character of Mr. Canning, in *The Keepsake*, for 1828.

Speeches : —

Defence of Peltier.
Declaration of the Merchants, read at the Royal Exchange.
Speech to the Loyal North Britons.
" upon the escape of Napoleon from Elba.
" upon the Trial of the Queen.
" upon the Oppression of the Greeks.
" relative to Scotch Juries.
" in favor of Reform.
" upon the Bill relating to Anatomical Dissections.
" on the Affairs of Portugal.
Vide also Parliamentary Debates for the years 1820, 26, 30, 31.

OPINIONS

OF DIFFERENT WRITERS UPON THE VALUE OF THE FOLLOWING DISCOURSE OF SIR JAMES MACKINTOSH.

"If we were disposed to recommend the study of public and foreign law, to common lawyers, we do not know how we could better do it, than by pointing out some illustrious examples of its successful accomplishment in our own age. Sir James Mackintosh, of late years so distinguished in Parliament as a friend to liberty, to science, and liberal institutions, and who is, at the same time, a most humane and philosophical jurist, has, in his incomparable Introductory Discourse to his Lectures on the Law of Nations, given us a finished specimen of the advantages resulting from the mastery of foreign public writers. It would, perhaps, be difficult to select from the whole mass of modern literature, a discourse of equal length, which is so just and beautiful, so accurate and profound, so captivating and enlightened, so enriched with the refinements of modern learning, and the simple grandeur of ancient principles. It should be read by every student, for instruction and purity of sentiment; and by lawyers of graver years, to refresh their souls with inquiries which may elevate them above the narrow influences of a dry and hardening practice."—*Judge Story.*

"A lecture, in the spirit of that discourse, would at all times be of great utility, and of much ornament to the profession of the law."—*Lord Loughborough.*

"If Mackintosh had published nothing else than his 'Discourse on the Law of Nature and Nations,' he would have left a perfect monument of his intellectual strength and symmetry; and even supposing that that essay had been recovered, only imperfect and mutilated, if but a score of its consecutive sentences could be shown, they would bear a testimony to his genius as decided as the bust of Theseus bears to Grecian art among the Elgin marbles."—*Campbell.*

"I am disposed to consider this Essay as the most perfect of all his writings."—*J. Scarlett.*

"I have no motive for wishing to flatter you; but I must be permitted to say that I have never met with any thing so able and elegant, on the subject, in any language."—*William Pitt, to the Author.*

"It seldom has been equalled, and never has been surpassed."—*Dr. Parr.*

"This has ever been admired as a most learned and finished production, full of sound views and research, exhibited in language at once choice and copious, classical and harmonious, marked at every turn by a *curiosa felicitas* of expression."—C. S. *American Jurist for July*, 1835.

DISCOURSE.

Before I begin a course of lectures on a science of great extent and importance, I think it my duty to lay before the public the reasons which have induced me to undertake such a labor, as well as a short account of the nature and objects of the course which I propose to deliver. I have always been unwilling to waste, in unprofitable inactivity, that leisure which the first years of my profession usually allow, and which diligent men, even with moderate talents, might often employ in a manner neither discreditable to themselves, nor wholly useless to others. Being thus desirous that my own leisure should not be consumed in sloth, I anxiously looked about for some way of filling it up, which might enable me, according to the measure of my humble abilities, to contribute somewhat to general usefulness. I had long been convinced that public lectures, which have been used in most ages and countries to teach the elements of almost every part of learning, were the most convenient mode in which these elements could be taught; that they were the best adapted for the important purposes of awakening

the attention of the student, of abridging his labor, of guiding his inquiries, of relieving the tediousness of private study, and of impressing on his recollection the principles of science. I saw no reason why the Law of England should be less adapted to this mode of instruction, or less likely to benefit by it, than any other part of knowledge. A learned gentleman, however, had already occupied that ground,[1] and will, I doubt not, persevere in the useful labor which he has undertaken. Upon his province it was far from my wish to intrude. It appeared to me that a course of lectures on another science closely connected with all liberal professional studies, and which had long been the subject of my own reading and reflection, might not only prove a most useful introduction to the law of England, but might also become an interesting part of general study, and an important branch of the education of those persons who were not destined for the profession of the law. I was confirmed in my opinion by the assent and approbation of men, whose names, if it were becoming to mention them on so slight an occasion, would give authority to truth, and afford some excuse even for error. Encouraged by that approbation, I resolved, without delay, to begin the course of lectures, of which I shall now proceed to state the outline.

The science which teaches the rights and duties of men and of states, has, in modern times, been called the Law of Nature and Nations. Under this comprehensive title are included the rules of morality, as they

[1] See "A Syllabus of Lectures on the Law of England, to be delivered in Lincoln's-Inn Hall, by M. Nolan, Esq." London, 1796.

govern the conduct of private men towards each other in all the various relations of human life; as they regulate both the obedience of citizens to the laws, and the authority of the magistrate in framing laws and administering government; as they modify the intercourse of independent commonwealths, in peace, and as they prescribe limits to their hostility in war. This important science comprehends only that part of *private ethics* which is capable of being reduced to fixed and general rules. It considers only those general principles of *jurisprudence* and *politics* which the wisdom of the lawgiver adapts to the peculiar situation of his own country, and which the skill of the statesman applies to the more fluctuating and infinitely varying circumstances which affect its immediate welfare and safety. "For there are in nature certain fountains of justice whence all civil laws are derived, but as streams; and like as waters do take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountains."[1]—*Bacon's Dig. and Adv. of Learn.* Works, vol. i. p. 101.

On the great questions of morality, of politics, and of municipal law, it is the object of this science to deliver only those fundamental truths of which the particular application is as extensive as the whole private and public conduct of men; to discover those "foun-

[1] I have not been deterred by some petty incongruity of metaphor from quoting this noble sentence. Mr. Hume had, perhaps, this sentence in his recollection, when he wrote a remarkable passage of his works. See *Hume's Essays*, vol. ii. p. 352. London edit., 1788.

tains of justice," without pursuing the "streams" through the endless variety of their course. But another part of the subject is treated with greater fulness and minuteness of application; namely, that important branch of it which professes to regulate the relations and intercourse of states, and more especially, on account both of their greater perfection and their more immediate reference to use, the laws of that intercourse as they are modified by the usages of the civilized nations of Christendom. Here this science no longer rests in general principles. That province of it which we now call the law of nations, has, in many of its parts, acquired among our European nations, much of the precision and certainty of positive law; and the particulars of that law are chiefly to be found in the works of those writers who have treated the science of which I now speak. It is because they have classed (in a manner which seems peculiar to modern times) the duties of individuals with those of nations, and established their obligation upon similar grounds, that the whole science has been called "The Law of Nature and Nations."

Whether this appellation be the happiest that could have been chosen for the science, and by what steps it came to be adopted among our modern moralists and lawyers,[1] are inquiries, perhaps, of more curiosity

[1] The learned reader is aware that the "jus naturæ" and "jus gentium" of the Roman lawyers are phrases of very different import from the modern phrases, "law of nature and law of nations." — "Jus naturale," says Ulpian, "est quod natura omnia animalia docuit."[1] D. 1. 1. 1. 3. "Quod naturalis ratio inter omnes homines constituit, id que apud omnes peræque custoditur

(1) Natural law, says Ulpian, is that law which nature teaches to all the animal creation.

than use; which, if they any where deserve much attention, will be more properly considered in a full examination of the subject, than within the short limits of an introductory discourse. Names are, however, in a great measure arbitrary; but the distribution of knowledge into its parts, though it may often perhaps be varied with little disadvantage, yet depends most certainly upon some fixed principles. The modern method of considering individual and national morality as the subjects of the same science, seems to me as convenient and reasonable an arrangement as can be adopted. The same rules of morality which hold together men in families, and which form families into commonwealths, also link together these commonwealths as members of the great society of mankind. Commonwealths, as well as private men, are liable to injury, and capable of receiving benefit, from each

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vocaturque jus gentium."[1] D. 1. 1. 9. But they sometimes neglect this subtle distinction — "Jure naturali quod appellatur jus gentium."[2] I. 2. 1. 11. *Jus feciale* was the Roman term for our law of nations. "Belli quidem æquitas sanctissime populi Rom. feciale jure perscripta est."[3] Off. 1. 11. Our learned civilian, Zouch, has accordingly entitled his work, "De Jure Feciali, sive de Jure *inter* Gentes."[4] The Chancellor D'Aguesseau, probably without knowing the work of Zouch, suggested that this law should be called "*Droit entre les Gens*,"[5] (Œuvres, tom. ii. p. 337,) in which he has been followed by a late most ingenious and original writer, Mr. Bentham, Princ. of Morals and Pol. p. 324. Perhaps these learned writers do employ a phrase which expresses the subject of this law with more accuracy than our common language; but I doubt whether innovations in the terms of science always repay us by their superior precision for the uncertainty and confusion which the change occasions.

(1) Whatever natural reason constitutes among all men, and that which is equally observed by all, is called the law of nations.

(2) By natural law, is meant the law of nations.

(3) Indeed the highest equity of beligerent rights among the Romans, is prescribed by the fecial law.

(4) Upon the Fecial, or international law.

(5) International Law.

other; it is, therefore, their interest as well as their duty to reverence, to practise, and to enforce those rules of justice which control and restrain injury, which regulate and augment benefit, which, even in their present imperfect observance, preserve civilized states in a tolerable condition of security from wrong, and which, if they could be generally obeyed, would establish, and permanently maintain, the well-being of the universal commonwealth of the human race. With justice, therefore, has one part of this science been called "*the natural law of individuals*," and the other "*the natural law of states*;" and it is too obvious to require observation,[1] that the application of both these laws, of the former as much as the latter, is modified and varied by customs, conventions, character, and situation. Hence the writers on general jurisprudence have considered states as moral persons; a mode of expression which has been called a fiction of law, but which may be regarded with more propriety as a bold metaphor, used to convey the important truth, that nations, though they acknowledge no common superior, and neither can nor ought to be subjected to human punishment, are yet under the same obligations to practise honesty and humanity, which would have bound individuals, if they were not compelled to discharge their duty by the just authority of magistrates, and if they could be conceived even to have ever subsisted without the protecting restraints of government. With the same views this law has been styled, and (notwithstand-

[1] This remark is suggested by an objection of *Vattel*, which is more specious than solid. See his *Prelim.* § 6.

ing the objections of some writers to the vagueness of the language) appears to have been styled with great propriety, "the law of nature." It may with sufficient correctness, or at least by an easy metaphor, be called a "*law*," inasmuch as it is a supreme, invariable, and uncontrollable rule of conduct to all men, the violation of which is avenged by natural punishments, necessarily flowing from the very constitution of things, and equally fixed and invariable with the order of nature itself. It is "*the law of nature*," because its general precepts are essentially adapted to promote the happiness of man, as long as he remains a being of the same nature with which he is at present endowed, or, in other words, as long as he continues to be man, in all the variety of times, places, and circumstances, in which he has been known, or can be imagined to exist; because it is discoverable by his natural reason, and suitable to his natural constitution; because its fitness and wisdom are founded on the general nature of human beings, and are altogether independent of any of those temporary and accidental situations in which they may be placed. With still more propriety, and indeed with the highest strictness, and the most perfect accuracy, it is called a law, when, according to those just and magnificent views which philosophy and religion open to us of the government of the world, it is received and reverenced as the sacred code promulgated by the great Legislator of the Universe for the guidance of his creatures to happiness; guarded and enforced, as our own experience may inform us, by the penal sanctions of shame, of remorse, of infamy, and of misery; and still farther enforced by the reasonable expecta-

tion of yet more awful penalties in a future and more permanent state of existence. The contemplation of the law of nature, under this full, mature, and perfect idea of its high origin and transcendent dignity, has called forth the enthusiasm of the greatest men, and the greatest writers of ancient and modern times, in those sublime descriptions, where they have exhausted all the powers of language, and surpassed all the other exertions, even of their own genius, in the display of the beauty and majesty of this sovereign and immutable law. It is of this law that Cicero has spoken in so many parts of his writings, not only with all the splendor and copiousness of eloquence, but with the sensibility of a man of virtue, and with the gravity and comprehension of a philosopher.[1] It is of this law that

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[1] "Est quidem vera lex, recta ratio, *naturæ congruens*, diffusa in omnes, constans, sempiterna, quæ vocet ad officium jubendo, vetando a fraude deterreat, quæ tamen neque probos frustra jubet aut vetat, neque improbos jubendo aut vetando movet. Huic legi neque obrogari fas est, neque derogari ex hac aliquid licet, neque tota abrogari potest. Nec vero aut per senatum aut per populum solvi hac lege possumus. Neque est quærendus explanator aut interpres ejus alius. Nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex et sempiterna, et immutabilis continebit, unusque erit communis quasi magister et imperator omnium Deus. Ille legis hujus inventor, disceptator, lator, cui qui non parebit *ipse se fugiet et naturam hominis aspernabitur*, atque hoc ipso luet maximas pœnas etiamsi cætera supplicia quæ putantur effugerit."[1] —*Fragm.* lib. iii. *Cicer. de Republ. apud Lactant.*

It is impossible to read such precious fragments without deploring the loss of a work, which, for the benefit of all generations, *should* have been immortal.

(1) True law is indeed right reason, consistent with nature, shedding its influence upon all, constant and immutable. It incites men to the exercise of every moral duty, it deters them by its prohibitions from the commission of fraud; neither does it command or prohibit the virtuous in vain, nor arouse the immoral by its monitions to overt acts. It is impious to change such a law; neither is it lawful to abate it, nor can it be wholly abrogated. The senate nor the people cannot discharge us from its obligations. It does not require an expounder or interpreter. It will not be one thing at Rome, and another at Athens; one law now, and a different one hereafter; but it is the same eternal and inviolable law, that comprehends

Hooker, in a strain of such sublime enthusiasm, thus speaks: — "Of law, no less can be said, than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, the greatest as not exempted from her power; both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy." — *Eccles. Pol.*, book i., in the conclusion.

Let not those, who, if I may use the language of the same Hooker, "talk of truth," without "ever sounding the depth from whence it springeth," hastily take it for granted, that these great masters of eloquence and reason were led astray by the specious delusions of mysticism, from the sober consideration of the true grounds of morality in the nature, the necessities, and the interests of man. They studied and taught indeed the principles of morals; but they thought it still more necessary, and more wise, a much nobler task, and more becoming a true philosopher, to inspire men with a love and reverence for virtue.[1] They were not con-

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[1] "Age vero urbibus constitutis ut fidem colere et justitiam retinere discerent et aliis parere suâ voluntate consuescerent, ac non modo labores excipiendos communis commodi causâ sed etiam vitam amittendam existimarent; qui tandem fieri potuit nisi homines ea quæ ratione invenissent eloquentiâ persuadere potuissent." [1] — *Cic. de Inv. Rhet.* lib. i. *in proem.*

every nation, throughout all time; and is, as it were, a common master and ruler; the divinity of all. God is the inventor, the giver, and the judge of this law; and whoever will not obey its precepts, let him flee, and avoid the companionship of his race; and thus he will suffer the severest penalties, although escape other punishments that await him. — *Edit.*

(1) Go on then and found cities, that the citizens may learn how good faith is to be cherished, justice maintained; and that they may accustom themselves willingly to obey others; and not only should they remember that burthens must be assumed, but if necessary, sacrifice their lives for the public weal. This will only be done, unless men can be persuaded to undertake those duties which it is the peculiar province of eloquence to inculcate.

tented with elementary speculations. They examined the foundations of our duty, but they felt and cherished a most natural, a most seemly, a most rational enthusiasm, when they contemplated the majestic edifice which is reared upon these solid foundations. They devoted the highest exertions of their mind to spread that beneficent enthusiasm among men. They consecrated, as a homage to virtue, the most perfect fruits of their genius. If these grand sentiments of "the good and fair," have sometimes prevented them from delivering the principles of ethics with the nakedness and dryness of science, at least, we must own that they have chosen the better part; that they have preferred the practical benefits of virtuous feeling, to the speculative curiosities of moral theory. Perhaps these wise men may have supposed that the minute dissection and anatomy of virtue, might, to the ill-judging eye, weaken the charm of her beauty.

It is not for me to attempt a theme which has perhaps been exhausted by these great writers. I am indeed much less called upon to display the worth and usefulness of the law of nations, than to vindicate myself from presumption in attempting a subject which has been already handled by so many masters. For the purpose of that vindication it will be necessary to sketch a very short and slight account (for such in this place it must unavoidably be) of the progress and present state of the science, and of that succession of able writers who have gradually brought it to its present perfection.

We have no Greek or Roman treatise remaining on the law of nations. From the title of one of the lost

works of Aristotle, it appears that he composed a treatise on the laws of war,[1] which, if we had the good fortune to possess it, would doubtless have amply satisfied our curiosity, and would have taught us both the practice of the ancient nations and the opinions of their moralists, with that precision which distinguishes the other works of that great philosopher. We can now only collect that practice and those opinions, imperfectly, from various passages which are scattered over the writings of philosophers, historians, poets, and orators. When I am led by the course of these lectures to examine more fully the government and manners of the ancient world, I shall be able, perhaps, to offer satisfactory reasons why that part of morality, which regulates the intercourse of states, did not form a separate and independent science among these enlightened nations. It would require a long discussion to unfold the various causes which united the modern nations of Europe into a closer society; which linked them together by the firmest bands of mutual dependence, and which thus, in process of time, gave to the law that regulated their intercourse greater importance, higher improvement, and more binding force. Among these causes we may enumerate a common extraction, a common religion, similar manners, institutions, and languages; in earlier ages, the authority of the See of Rome, and the extravagant claims of the imperial crown; in later times, the connections of trade, the jealousy of power, the refinement of civilization, the

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[1] Δικαίωμα]α τῶν Πολέμων.
(1) The laws of war.

cultivation of science, and, above all, that general mildness of character and manners which arose from the combined and progressive influence of chivalry, of commerce, of learning, and of religion. Nor must we omit the similarity of those political institutions, which, in every country that had been over-run by the Gothic conquerors, bore discernible marks of the rude but bold and noble outline of liberty, originally sketched by the hand of these generous barbarians. These, and many other causes, conspired to unite the nations of Europe in a more intimate connection and a more constant intercourse, and consequently made the regulation of their intercourse more necessary, and the law that was to govern it more important. In proportion as they approached to the condition of provinces of the same empire, it became almost as essential that Europe should have a precise and comprehensive code of the law of nations, as that each separate country should have a system of municipal law. The labors of the learned accordingly began to be directed to this subject in the sixteenth century, soon after the revival of learning, and after that regular distribution of power and territory which has subsisted, with little variation, until our times. The critical examination of these early writers would, perhaps, not be very interesting in an extensive work, and it would be unpardonable in a short discourse. I shall only here observe that they were all more or less shackled by the barbarous philosophy of the schools, and that they were impeded in their progress by a timorous deference for the inferior and technical parts of the Roman law, without raising their views to the compre-

hensive principles which will for ever inspire mankind with veneration for that grand monument of human wisdom. It was only, indeed, in the sixteenth century, that the Roman law was first studied and understood as a science connected with Roman history and literature, and illustrated by men whom Ulpian and Papinian would not have disdained to acknowledge as their successors.[1] Among the writers of that age we may perceive the ineffectual attempts, the partial advances, the occasional streaks of light which always precede great discoveries, and works that are to instruct posterity.

The reduction of the law of nations, to a system, was reserved for Grotius; who, by the advice of Lord Bacon[2] and Peiresc, undertook this arduous task. He produced a work which we now indeed justly deem imperfect; but which is, perhaps, the most complete that the world has yet owed, at so early a stage in the progress of any science, to the genius and learning of

[1] Cujacius, Brissonius, Hottomannus, &c. &c. — Vide *Gravina Orig. Jur. Civil.* p. 132—138. edit. Lips. 1737.

Leibnitz, a great mathematician as well as philosopher, declares that he knows nothing which approaches so near to the method and precision of geometry as the Roman law. — *Op.* tom. iv. p. 254.

[2] I have here been misled by an expression of a modern panegyrist of Grotius. He tells us that the book "*De Jure Belli*" [1] was undertaken "*hortante* Bacone Verulamio." [2] Vid. Cras *Idea perfecti Jurisconsulti in Hugone Grotio.* [3] Though aware of the ambiguity of the expression, I thought that it referred more naturally to personal exhortation. I now find, however, that it alludes only to the plan sketched out in Lord Bacon's writings, in which sense Sir Isaac Newton might be said to have composed his Principia "*hortante Bacone Verulamio.*" The authentic history of the work of Grotius is to be found in his own most interesting Letters, and in Gassendi's very able and curious life of Peiresc. — (*Note to the third edit.*)

(1) On the law of war.
(2) At a suggestion made in Lord Bacon.
(3) See Hugo Grotius upon the modern idea of a perfect Juris consult.

one man. So great is the uncertainty of posthumous reputation, and so liable is the fame, even of the greatest men, to be obscured by those new fashions of thinking and writing which succeed each other so rapidly among polished nations, that Grotius, who filled so large a space in the eye of his contemporaries, is now, perhaps, known to some of my readers only by name. Yet, if we fairly estimate both his endowments and his virtues, we may justly consider him as one of the most memorable men who have done honor to modern times. He combined the discharge of the most important duties of active and public life with the attainment of that exact and various learning which is generally the portion only of the recluse student. He was distinguished as an advocate and a magistrate, and he composed the most valuable works on the law of his own country; he was almost equally celebrated as a historian, a scholar, a poet, and a divine; a disinterested statesman, a philosophical lawyer, a patriot who united moderation with firmness, and a theologian who was taught candor by his learning. With singular merit and singular felicity he preserved a life so blameless, that, in times of the most furious civil and religious faction, the sagacity of fierce and acute adversaries was vainly exerted to discover a stain on his character. It was his fate to be exposed to the severest tests of human virtue; but such was the happy temperature of his mind, that he was too firm to be subdued by adversity, and too mild and honest to be provoked to violence by injustice. Amidst all the hard trials and galling vexations of a turbulent political life, he never once deserted his friends when they

were unfortunate, nor insulted his enemies when they were weak. Unmerited exile did not damp his patriotism; the bitterness of controversy did not extinguish his charity. He was just, even to his persecutors, and faithful to his ungrateful country.

Such was the man who was destined to give a new form to the law of nations, or rather create a science, of which only rude sketches and indigested materials were scattered over the writings of those who had gone before him. By tracing the laws of his country to their principles, he was led to the contemplation of the law of nature, which he justly considered as the parent of all municipal law.[1] Few works were more celebrated than that of Grotius in his own days, and in the age which succeeded. It has, however, been the fashion of the last half-century to depreciate his work as a shapeless compilation, in which reason lies buried under a mass of authorities and quotations. This fashion originated among French wits and declaimers, and it has been, I know not for what reason, adopted, though with far greater moderation and decency, by some respectable writers among ourselves. As to those who first used this language, we are bound in candor to suppose that they never read the work; for, if they had not been deterred from the perusal of it by such a formidable display of Greek characters, they must soon have discovered that Grotius never quotes on any subject till he has first appealed to some principles, and often, though not always, to principles the soundest and most rational.

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[1] Proavia juris civilis.[1] — *De Jur. Bell. ac Pac. Proleg.* § 16.

(1) The parent of civil law.

But another sort of answer is due to some of those[1] who have criticised Grotius, and that answer might be given in the words of Grotius himself.[2] He was not of such a stupid and servile cast of mind, as to quote the opinions of poets or orators, of historians and philosophers, as if they were judges, from whose decision there was no appeal. He quotes them, as he tells us himself, as witnesses whose conspiring testimony, mightily strengthened and confirmed by their discordance on almost every other subject, is a conclusive proof of the unanimity of the whole human race on the great rules of duty and the fundamental principles of morals. On such matters, poets and orators are the most unexceptionable of all witnesses; for they address themselves to the general feelings and sympathies of mankind; they are biassed by no system either of philosophy or sophistry; they can attain none of their objects; they can neither convince, nor persuade, nor move, nor delight, if they utter moral sentiments not in unison with those of their readers or hearers. Surely no system of moral philosophy can disregard the general feelings of human nature and the according judgment of all ages and nations. But where are these feelings and that judgment recorded and preserved? In those very writings which Grotius is gravely blamed for having quoted. The usages and laws of nations, the events of history, the opinions of philosophers, the sentiments of orators and poets, as well as the observation of common life,

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[1] Dr Paley, Princ. of Mor. and Polit. Philos. Pref. p. xiv. and xv.

[2] Grot. Jur. Bell. et Pac. Proleg. § 40.

are, in truth, the materials out of which the science of morality is formed; and those who neglect them are justly chargeable with a vain attempt to philosophize without regard to fact and experience, the sole foundation of all true philosophy.

If this were merely an objection of taste, I should be willing to allow that Grotius has indeed poured forth his learning with a profusion which sometimes rather encumbers than adorns his work, and which is not always necessary to the illustration of his subject. Yet, even in making that concession, I should rather yield to the taste of others than speak from my own feelings. I own that such richness and splendor of literature have a powerful charm for me. They fill my mind with an endless variety of delightful recollections and associations. They relieve the understanding in its progress through a vast science, by calling up the memory of great men and of interesting events. By this means we see the truths of morality clothed with all the eloquence (not that could be produced by the powers of one man, but) that could be bestowed on them by the collective genius of the world. Even virtue and wisdom themselves acquire new majesty in my eyes, when I thus see all the great masters of thinking and writing called together, as it were, from all times and countries, to do them homage, and to appear in their train.

But this is no place for discussions of taste, and I am very ready to own that mine may be corrupted. The work of Grotius is liable to a more serious objection, though I do not recollect that it has ever been

made.[1] His method is inconvenient and unscientific. He has inverted the natural order. That natural order undoubtedly dictates, that we should first search for the original principles of the science in human nature; then apply them to the regulation of the conduct of individuals, and lastly, employ them for the decision of those difficult and complicated questions that arise with respect to the intercourse of nations. But Grotius has chosen the reverse of this method. He begins with the consideration of the states of peace and war, and he examines original principles only occasionally and incidentally as they grow out of the questions which he is called upon to decide. It is a necessary consequence of this disorderly method, which exhibits the elements of the science in the form of scattered digressions, that he seldom employs sufficient discussion on these fundamental truths, and never in the place where such a discussion would be most instructive to the reader.

This defect in the plan of Grotius was perceived, and supplied by Puffendorff, who restored natural law to that superiority which belonged to it, and with great propriety treated the law of nations as only one main branch of the parent stock. Without the genius of his master, and with very inferior learning, he has yet treated this subject with sound sense, with clear method, with extensive and accurate knowledge, and with a copiousness of detail sometimes indeed tedious,

[1] This objection against the method of Grotius is stated by Mr. Ward, in his learned work on "The History of the Law of Nations before the time of Grotius;" though at the time of writing this Discourse I had forgotten that passage of his work. — (*Note to the third edition.*)

but always instructive and satisfactory.[1] His work will always be studied by those who spare no labor to acquire a deep knowledge of the subject; but it will, now, I fear, be oftener found on the shelf than on the desk of the general student. In the time of Mr. Locke it was considered as the manual of those who were intended for active life; but in the present age I believe that men of business are too much occupied, men of letters are too fastidious, and men of the world too indolent, for the study or even the perusal of such works. Far be it from me to derogate from the real and great merit of so useful a writer as Puffendorff. His treatise is a mine in which all his successors must dig. I only presume to suggest, that a book so prolix, and so utterly void of all the attractions of composition, is likely to repel many readers who are interested, and who might be disposed to acquire some knowledge of the principles of public law.

Many other circumstances might be mentioned, which conspire to prove that neither of the great works of which I have spoken, has superseded the necessity of a new attempt to lay before the public a system of the Law of Nations. The language of science is so completely changed since both these works were written, that any writer who should now employ their terms in his moral reasonings, would be almost unintelligible to some of his hearers or readers; and to some among them too who are neither ill qualified nor

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[1] I am not induced to retract this commendation by the great authority even of Leibnitz himself, who, in one of his incomparable letters, calls Puffendorff "*Vir parum jurisconsultus et minime philosophus.*"[1]

(1) A bad lawyer and a worse philosopher.

ill disposed to study such subjects with considerable advantage to themselves. The learned, indeed, well know how little novelty or variety is to be found in scientific disputes. The same truths and the same errors have been repeated from age to age, with little variation but in the language; and novelty of expression is often mistaken by the ignorant for substantial discovery. Perhaps, too, very nearly the same portion of genius and judgment has been exerted in most of the various forms under which science has been cultivated at different periods of history. It is not improbable that much of the superiority of those writers who continue to be read, often consists in taste, in prudence, in a happy choice of subject, in a favorable moment, in an agreeable style, in the good fortune of a prevalent language, or in other advantages which are either accidental, or the result rather of the secondary than of the highest faculties of the mind. But these reflections, while they moderate the pride of invention, and dispel the extravagant conceit of superior illumination, yet serve to prove the use, and indeed the necessity, of composing, from time to time, new systems of science adapted to the opinions and language of each succeeding period. Every age must be taught in its own language. If a man were now to begin a discourse on ethics with an account of the "*moral entities*" of Puffendorff,[1] he would speak an unknown tongue.

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[1] I do not mean to impeach the soundness of any part of Puffendorff's reasoning, founded on moral entities. It may be explained in a manner consistent with the most just philosophy. He used, as every writer must do, the scientific language of his own time. I only assert, that to those who are

It is not, however, alone as a mere translation of former writers into modern language, that a new system of public law seems likely to be useful. The age in which we live, possesses many advantages, which are peculiarly favorable to such an undertaking. Since the composition of the great works of Grotius and Puffendorff, a more modest, simple, and intelligible philosophy has been introduced into the schools; which has, indeed, been grossly abused by sophists, but which, from the time of Locke, has been cultivated and improved by a succession of disciples worthy of their illustrious master. We are thus enabled to discuss with precision, and to explain with clearness, the principles of the science of human nature, which are in themselves on a level with the capacity of every man of good sense, and which only appeared to be abstruse from the unprofitable subtleties with which they were loaded, and the barbarous jargon in which they were expressed. The deepest doctrines of morality, have, since that time, been treated in the perspicuous style, and even with some degree of the beauty and eloquence, of the ancient moralists. That philosophy, on which are founded the principles of our duty, if it has not become more certain (for morality admits no discoveries), is certainly less "harsh and crabbed," less obscure and haughty in its language, less forbidding and disgusting in its appearance, than in the days of our ancestors. If learning, in this progress towards popularity, has en-

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unacquainted with ancient systems, his philosophical vocabulary is obsolete and unintelligible.

gendered (as we must own that it has) a multitude of superficial and most mischievous sciolists, the antidote must come from the same quarter with the disease. Popular reason can alone correct popular sophistry.

Nor is this the only advantage which a writer of the present age would possess over the celebrated jurists of the last century. Since that time, vast additions have been made to the stock of our knowledge of human nature. Many dark periods of history have since been explored. Many regions of the globe, hitherto unknown, have been visited and described by travellers and navigators, not less intelligent than intrepid. We may be said to stand at the confluence of the greatest number of streams of knowledge, flowing from the most distant sources, that ever met at one point. We are not confined, as the learned of the last age generally were, to the history of those renowned nations who are our masters in literature. We can bring before us man in a lower and more abject condition than any in which he was ever seen before. The records, have, in part, been opened to us of those mighty empires of Asia,[1] where the begin-

[1] I cannot prevail on myself to pass over this subject without paying my humble tribute to the memory of Sir W. Jones, who has labored so successfully in Oriental literature, whose fine genius, pure taste, unwearied industry, unrivalled and almost prodigious variety of acquirements, must inspire all who love or cultivate letters, with admiration and reverence. The pleasure with which we contemplate such extraordinary qualities, is checked by the recollection of the recent and premature death of that great man, who was not more distinguished by his genius and learning than by his amiable dispositions and spotless purity of life.

I hope I shall be pardoned if I add my applause to the genius and learning of Mr. Maurice, who treads in the steps of his illustrious friend; and who has bewailed his death in a strain of genuine and beautiful poetry, not unworthy of happier periods of our English literature.

nings of civilization are lost in the darkness of an unfathomable antiquity. We can make human society pass in review before our mind, from the brutal and helpless barbarism of *Terra del Fuego*, and the mild[1] and voluptuous savages of Otaheite; to the tame, but ancient and immovable civilization of China, which bestows its own arts on every successive race of conquerors; to the meek and servile natives of Hindostan, who preserve their ingenuity, their skill and their science, through a long series of ages, under the yoke of foreign tyrants; to the gross and incorrigible rudeness of the Ottomans, incapable of improvement, and extinguishing the remains of civilization among their unhappy subjects, once the most ingenious nations of the earth. We can examine almost every imaginable variety in the character, manners, opinions, feelings, prejudices, and institutions of mankind, into which they can be thrown, either by the rudeness of barbarism, or by the capricious corruptions of refinement, or by those innumerable combinations of circumstances, which, both in these opposite conditions and in all the intermediate stages between them, influence or direct the course of human affairs. History, if I may be allowed the expression, is now a vast museum,

[1] The Otaheiteans will probably not be thought to deserve either to be praised for their mildness or envied for their happiness, after the interesting account of their character and situation, which has been lately laid before the public in "The Missionary Voyage;" an account which has the strongest marks of accuracy and authenticity, and which, as it was derived from intimate intercourse, must far outweigh the hasty and superficial observations of panegyrists, who allowed themselves no sufficient time either to gain accurate information, or to let the first enthusiasm, excited by novelty, subside.

in which specimens of every variety of human nature may be studied. From these great accessions to knowledge, lawgivers and statesmen, but, above all, moralists and political philosophers, may derive the most important instructions. They may plainly discover, in all the useful and beautiful variety of governments and institutions, and under all the fantastic multitude of usages and rites which have prevailed among men, the same fundamental, comprehensive truths, the sacred master principles which are the guardians of human society, recognised and revered (with few and slight exceptions) by every nation upon earth, and uniformly taught (with exceptions still fewer) by a succession of wise men from the first dawn of speculation to the present moment. The exceptions, few as they are, will, on more reflection, be found rather apparent than real. Nay, if we could raise ourselves to that height from which we ought to survey so vast a subject, these exceptions would altogether vanish; the brutality of a handful of savages would disappear in the immense prospect of human nature, and the murmurs of a few licentious sophists would not ascend to break the general harmony. This consent of mankind in first principles, and this endless variety in their application, which is one among many valuable truths which we may collect from our present extensive acquaintance with the history of man, is itself of transcendent importance. Much of the majesty and authority of virtue is derived from that consent, and almost the whole of practical wisdom is founded on that variety.

What former age could have supplied facts for such a work as that of Montesquieu? He indeed has been charged, and it may be justly, with abusing this advantage, by indiscriminately adopting the narratives of travellers, without duly estimating their accuracy and veracity. But if we reluctantly confess the justness of this objection; if we are compelled to own that he exaggerates the influence of climate, that he ascribes too much to the foresight and forming skill of legislators, and far too little to time and circumstances, in the growth of political constitutions; that the substantial character and essential differences of governments are often lost and confounded in his technical language and arrangement; that he often bends the free and irregular outline of nature to the imposing but fallacious geometrical regularity of system; that he has chosen a style of affected abruptness, sententiousness, and vivacity, ill suited to the gravity of his subject: after all these concessions (for his fame is large enough to spare many concessions), the spirit of laws will still remain, not only one of the most solid and durable monuments of the powers of the human mind, but a striking evidence of the inestimable advantages which political philosophy may receive from a wide survey of all the various conditions of human society.

In the present century, a slow and silent, but very real mitigation has taken place in the practice of war; and in proportion as that mitigated practice has received the sanction of time, it is raised from the rank of mere usage, and becomes part of the law of nations. Whoever will compare our present modes of warfare

with the system of Grotius,[1] will clearly discern the immense improvements which have been made in that respect since the publication of his work, during a period, perhaps in every point of view, the happiest to be found in the history of the world. In the same period, many important points of public law have been the subject of contest, both by argument and by arms, of which we find either no mention, or very obscure traces, in the history of preceding times.

There are other circumstances to which I allude with hesitation and reluctance, though it must be owned that they afford to a writer of this age some degree of unfortunate and deplorable advantage over his predecessors. More important and terrible instruction has of late been condensed within the short compass of a few years, than in the usual course of human affairs is scattered over the history of many ages. Men's wit, sharpened by their passions, has penetrated to the bottom of almost all political questions. Unfortunately for mankind, even the fundamental rules of morality themselves, have, for the first time, become the subject of doubt and discussion. I shall consider it as my duty to abstain from all mention of these awful events, and of these fatal controversies. But incurious and indocile indeed must be the mind of that man who has either overlooked all these things, or reaped no instruction from the contemplation of them.

From the foregoing reflections, it appears, that,

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[1] Especially those chapters of the third book, entitled, *Temperamentum circa Captivos*,[1] &c. &c.

(1) Moderation in regard to prisoners.

since the composition of those two great works on the Law of Nature and Nations, which continue to be the classical and standard works on that subject, we have gained both more convenient instruments of reasoning and more extensive materials for science; that the code of war has been enlarged and improved; that new questions have been practically decided; and that new controversies have arisen regarding the intercourse of independent states, and the first principles of morality and civil government.

Some readers, may, however, think that in the course of the observations which I am offering, to excuse the presumption of my own attempt, I have omitted the mention of later writers, to whom some part of my remarks is not justly applicable. But, perhaps, after farther consideration, I shall stand acquitted in the judgment of such readers. Writers on particular questions of public law, are not within the scope of my observations. They have furnished the most valuable materials; but I am speaking only of a system. To the large work of Wolffius, the observations which I have made on Puffendorff, as a book for general use, will apply with tenfold force. His abridger, Vattel, deserves, indeed, considerable praise. He is a very ingenious, clear, elegant, and useful writer. But he only considers one part of this extensive subject, namely, the law of nations strictly so called; and I cannot help thinking, that, even in this department of the science, he has adopted some doubtful and dangerous principles,[1] not to mention his constant defi-

[1] I was unwilling to have expressed more strongly or confidently my disapprobation of some parts of Vattel; though I might have justified more

ciency in that fulness of example and illustration, which so much embellishes and strengthens reason. It is hardly necessary to take any notice of the text-book of Heineccius, the best writer of elementary books, with whom I am acquainted on any subject. Burlamaqui is an author of superior merit; but he confines himself too much to the general principles of morality and politics, to require much observation from me in this place. The same reason will excuse me for passing over, in silence, the works of many philosophers and moralists, to whom, in the course of my proposed lectures, I shall owe and confess the greatest obligations; and it might, perhaps, make it unnecessary for me to speak of the work of Dr. Paley, if I were not anxious to avail myself of this public opportunity of professing my gratitude for the instruction and pleasure which I have received from that excellent writer, who possesses, in so eminent a degree, those invaluable qualities of a moralist, good sense, caution, sobriety; and perpetual reference to that excellence which is attainable in public institutions, and to that virtue which is practicable in human life; who, because his taste and his modesty have led him to disdain the ostentation of novelty, has, perhaps, lost some part of that reputation for originality, to which he is justly entitled, and which he might so easily have acquired, if, instead of blending his own reasonings with the body of received opinions, he had

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decisive censure by the authority of the greatest lawyers of the present age. His politics are fundamentally erroneous; his declamations are often insipid and impertinent; and he has fallen into great mistakes in important practical discussions of public law.

stooped to copy the arts of those who hide the poverty of their invention by extravagance, and disguise the most meagre common-places in the gaudy dress of parodox.

No writer, since the time of Grotius, of Puffendorff, and of Wolf, has combined an investigation of the principles of natural and public law, with a full application of these principles to particular cases; and in these circumstances, I trust, it will not be deemed extravagant presumption in me to hope that I shall be able to exhibit a view of this science, which shall, at least, be more intelligible and attractive to students, than the learned treatises of these celebrated men. I therefore, shall now proceed to state the general plan and subjects of the lectures in which I am to make this attempt.

I. The being whose actions the law of nature professes to regulate, is man. The science of his duties must be founded on the knowledge of his nature.[1] It is impossible to approach even the threshold of moral philosophy, without a previous examination of the faculties and habits of the human mind. Let no reader be repelled from this examination, by the odious and terrible name of *metaphysics;* for it is, in truth, nothing more than the employment of good sense, in observing our own thoughts, feelings, and actions; and when the facts which are thus observed, are expressed as they ought to be, in plain language, it is, perhaps, above all other sciences, most on a level with

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[1] Natura enim juris explicanda est nobis, *eaque ab hominis repetenda naturâ.*[1] — *Cic. de Leg.* lib. i. c. 5.

(1) For I am to explain the nature of law, and that must be sought for in the constitution of man.

the capacity and information of the generality of thinking men. When it is thus expressed, it requires no previous qualification, but a sound judgment, perfectly to comprehend it; and those who wrap it up in a technical and mysterious jargon, always give us strong reason to suspect that they are not philosophers but impostors. Whoever thoroughly understands such a science, must be able to teach it plainly to all men of common sense.

The proposed course will therefore open with a very short, and, I hope, a very simple and intelligible account of the powers and operations of the human mind. By this plain statement of facts, it will not be difficult to decide many celebrated, though frivolous, and merely verbal controversies, which have long amused the leisure of the schools, and which owe both their fame and their existence to the ambiguous obscurity of scholastic language. It will, for example, only require an appeal to every man's experience, to prove that we often act purely from a regard to the happiness of others, and are, therefore, social beings; and even without being consummate judges of the deceptions of language, we can detect and despise the sophistical trifler, who tells us, that, because we experience a gratification in our benevolent actions, we are therefore exclusively and uniformly selfish. A correct examination of facts will lead us to discover that quality which is common to all virtuous actions, and which distinguishes them from those which are vicious and criminal. But we shall see that it is necessary for man to be governed not by his own transient and hasty opinion upon the tendency of every partic-

ular action, but by those fixed and unalterable rules, which are the joint result of the impartial judgment, the natural feelings, and the embodied experience of mankind. The authority of these rules is, indeed, founded only on their tendency to promote private and public welfare; but the morality of actions will appear solely to consist in their correspondence with moral rules. By the help of this obvious distinction we shall vindicate a just theory, which, far from being modern, is, in fact, as ancient as philosophy itself, both from plausible objections, and from the odious imputation[1] of supporting those absurd and monstrous systems which have been built upon it. Beneficial tendency is the foundation of moral rules, and it is the criterion by which we are to try those habits and sentiments which are the motives of all human conduct. But neither is it the immediate standard, nor can a regard to it ever be the principal motive of action. No precept, indeed, deserves a place among the rules of morality, unless its observance will promote the happiness of mankind;[2] and no man ought to cultivate in his own mind any disposition of which the natural fruits are not such actions as conduce to its own well-being, and to that of his fellow-men. Utility is doubtless always the ultimate test of the soundness of general rules, but it can very rarely be the direct test of the morality of single actions. It is also the test of our

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[1] See a late ingenious tract by Mr Green, entitled, "An Enquiry into the leading Principle of the new System of Morals."

[2] Or, to use the language of Cicero, unless it be adapted "AD TUENDAM MAGNAM ILLAM SOCIETATEM GENERIS HUMANI."[1]

(1) To the preservation of that great companionship of the human race.

habitual sentiments, but it can still more rarely supply their place as motives to virtue. A *rule* is moral, of which the observance tends to produce general happiness.[1] An *action* is virtuous which accords with moral rules; and a *character* is virtuous in which the natural feelings of the human heart are so moderated, matured, and improved, as to produce steady habits of virtuous action.[2]

Without, however, dwelling longer on subjects which cannot be clearly stated, unless they are fully unfolded, I content myself with observing, that it shall be my object, in this preliminary, but most important part of the course, to lay the foundations of morality so deeply in human nature, as may satisfy the coldest inquirer; and, at the same time, to vindicate the paramount authority of the rules of our duty, at all times, and in all places, over all opinions of interest, and speculations of benefit, so extensively, so universally, and so inviolably, as may well justify the grandest and the most apparently extravagant effusions of moral enthusiasm. If, notwithstanding all my endeavors to deliver these doctrines with the utmost simplicity, any of my auditors should still reproach me for introducing such abstruse matters, I must shelter myself behind the authority of the wisest of men. "If they, (the ancient moralists),

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[1] Whoever is desirous of studying these questions thoroughly, will do well to consult "Search's Light of Nature," vol. ii.; a work, which, after much consideration, I think myself authorised to call the most original and profound that has ever appeared on moral philosophy.

[2] Est autem virtus nihil aliud quam in se perfecta atque ad summum perducta natura.[1] — *Cic. de Leg.* lib. i. c. 8.

(1) Virtue is nothing else than superior natural excellence, cultivated in the highest degree.

before they had come to the popular and received notions of virtue and vice, had staid a little longer upon the inquiry concerning *the roots of good and evil*, they had given, in my opinion, a great light to that which followed; and specially if they had consulted with nature, they had made their doctrines less prolix and more profound."[1] What Lord Bacon desired for the mere gratification of scientific curiosity, the welfare of mankind now imperiously demands. Shallow systems of metaphysics have given birth to a brood of abominable and pestilential paradoxes, which nothing but a more profound philosophy can destroy. However we may lament the necessity of discussions which may shake the habitual reverence of some men for those rules which it is the chief interest of all men to practise, we now have no choice left. We must either dispute, or abandon the ground. Undistinguishing and unmerited invectives against philosophy, will only harden sophists and their disciples in the insolent conceit, that they are in possession of an undisputed superiority of reason; and that their antagonists have no arms to employ against them, but those of popular declamation. Let us not, for a moment, even appear to suppose, that philosophical truth and human happiness are so irreconcilably at variance. I cannot express my own opinion upon this subject so well as in the words of a most valuable, though generally neglected writer: "The science of abstruse learning, when completely attained, is like Achilles's spear, that healed the wounds it had made before; so this knowledge

[1] Bacon, Dign. and Adv. of Learn. book ii.

serves to repair the damage itself had occasioned, and this, perhaps, is all it is good for; it casts no additional light upon the paths of life, but disperses the clouds with which it has overspread them before; it advances not the traveller one step in his journey, but conducts him back again to the spot from whence he wandered. Thus the land of philosophy consists partly of an open champaign country, passable by every common understanding, and partly of a range of woods, traversable only by the speculative, and where they too frequently delight to amuse themselves. Since then we shall be obliged to make incursions into this latter tract, and shall probably find it a region of obscurity, danger, and difficulty, it behoves us to use our utmost endeavors for enlightening and smoothing the way before us."[1] We shall, however, remain in the forest only long enough to visit the fountains of those streams which flow from it, and which water and fertilize the cultivated region of morals, to become acquainted with the modes of warfare practised by its savage inhabitants, and to learn the means of guarding our fair and fruitful land against their desolating incursions. I shall hasten from speculations, to which I am naturally, perhaps, but too prone, and proceed to the more profitable consideration of our practical duty.

II. The first and most simple part of ethics is that which regards the duties of private men towards each other, when they are considered apart from the sanction of positive laws. I say, *apart* from that sanction, not *antecedent* to it; for though we *separate* private

[1] Search's Light of Nature, by Abraham Tucker Esq., vol. i. pref. page xxxiii.

from political duties, for the sake of greater clearness and order in reasoning, yet we are not to be so deluded by this mere arrangement of convenience as to suppose that human society ever has subsisted, or ever could subsist, without being protected by government and bound together by laws. All these relative duties of private life have been so copiously and beautifully treated by the moralists of antiquity, that few men will now choose to follow them who are not actuated by the wild ambition of equalling Aristotle in precision, or rivalling Cicero in eloquence. They have been also admirably inculcated by modern moralists, among whom it would be gross injustice not to number many of the preachers of the Christian religion, whose peculiar character is that spirit of universal charity, which is the living principle of all our social duties. For it was long ago said, with great truth, by Lord Bacon, "that there never was any philosophy, religion, or other discipline, which did so plainly and highly exalt that good which is communicative, and depress the good which is private and particular, as the Christian faith."[1] Indeed the appropriate praise of this religion is not so much, that it has taught new duties, as that it breathes a milder and more benevolent spirit over the whole extent of morals.

On a subject which has been so exhausted, I should naturally have contented myself with the most slight and general survey, if some fundamental principles had not of late been brought into question, which, in all former times, have been deemed too evident to

[1] Bacon, Dign. and Adv. of Learn. book ii.

require the support of argument, and almost too sacred to admit the liberty of discussion. I therefore shall endeavor to strengthen some parts of the fortifications of morality which have hitherto been neglected, only because no man had ever been hardy enough to attack them. Almost all the relative duties of human life will be found more immediately, or more remotely, to arise out of the two great institutions of property and marriage. They adorn, preserve, and even constitute society. Upon their gradual improvement depends the progressive civilization of mankind; on them rests the whole order of civil life. We are told by Horace, that the first efforts of lawgivers to civilize men, consisted in strengthening and regulating these institutions, and fencing them round with rigorous penal laws.

> Oppida cœperunt munire, et ponere leges,
> Neu quis fur esset, neu quis latro, neu quis adulter.[1]
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> 1 Serm. iii. 105.

A celebrated ancient orator, of whose poems we have but a few fragments remaining, has well described the order in which human society is gradually led to its highest improvements under the guardianship of those laws which secure property and regulate marriage.

> Et leges sanctas docuit, et cara jugavit
> Corpora conjugiis; et magnas condidit urbes.[2]
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> Frag. C. Licin. Calvi.

Nothing can be more philosophical than the succession of ideas here presented by Calvus: for it is only

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(1) And now they cease from war; their towns enclose
With formidable walls, and laws compose
To strike the thief, and highwayman with dread,
And vindicate the sacred marriage-bed. — *Francis.*

(2) He taught them divine laws, instituted marriages, and built spacious cities.

when the general security is maintained by the laws, and when the order of domestic life is fixed by marriage, that nations emerge from barbarism, proceed by slow degrees to cultivate science, to found empires, to build magnificent cities, and to cover the earth with all the splendid monuments of civilized art. These two great institutions convert the selfish as well as the social passions of our nature into the firmest bands of a peaceable and orderly intercourse ; they change the sources of discord into principles of quiet ; they discipline the most ungovernable, they refine the grossest, and they exalt the most sordid propensities ; they become the perpetual fountain of all that strengthens, and preserves, and adorns society ; they nourish the individual, and they perpetuate the race. As they were at first the sole authors of all civilization, so they must for ever continue its sole protectors. They alone make the society of man with his fellows delightful, or secure, or even tolerable. Every argument and example, every opinion and practice which weakens their authority, tends also to dissolve the fellowship of the human race, to replunge *men* into that state of helpless ferocity, and to condemn the earth to that unproductive wildness, from which they were both originally raised, by the power of these sacred principles ; which animate the activity of exertion and yet mitigate the fierceness of contest, which move every plough and feed every mouth, and regulate every household and rear every child ; which are the great nourishers and guardians of the world. The enemy of these principles is the enemy of mankind. Around these institutions all our social duties will be found at various

distances to range themselves; some more near, obviously essential to the good order of human life, others more remote, and of which the necessity is not at first view so apparent; and some so distant, that their importance has been sometimes doubted, though upon more mature consideration they also will appear to be outposts and advanced guards of these two great fundamental principles; that man should securely enjoy and freely transmit the fruits of his labor, and that the society of the sexes should be so wisely ordered as to make it a school of the kind affections, and a fit nursery for the commonwealth.

The subject of *property* is of great extent. It will be necessary to establish the foundation of the rights of acquisition, alienation and transmission, not in imaginary contracts or a pretended state of nature, but in their subserviency to the subsistence and well-being of mankind. It will not only be curious, but useful, to trace the history of property from the first loose and transient occupancy of the savage, through all the modifications which it has at different times received, to that comprehensive, subtle, and anxiously minute code of property which is the last result of the most refined civilization.

I shall observe the same order in considering the society of the sexes as it is regulated by the institution of marriage.[1] I shall endeavor to lay open those unalterable principles of general interest on which that

[1] See on this subject an incomparable fragment of the first book of Cicero's Economics, which is too long for insertion here, but which, if it be closely examined, may perhaps dispel the illusion of those gentlemen, who have so strangely taken it for granted, that Cicero was incapable of exact reasoning.

institution rests: and if I entertain a hope that on this subject I may be able to add something to what our masters in morality have taught us, I trust that the reader will bear in mind, as an excuse for my presumption, that *they* were not likely to employ much argument where they did not foresee the possibility of doubt. I shall also consider the history [1] of marriage, and trace it through all the forms which it has assumed, to that decent and happy permanency of union which has, above all other causes, contributed to the quiet of society, and the refinement of manners in modern times. Among many other inquiries which this subject will suggest, I shall be led more particularly to

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[1] This progress is traced with great accuracy in some beautiful lines of Lucretius:

——— Mulier conjuncta viro concessit in unum,
Castaque privatæ Veneris connubia læta
Cognita sunt, prolemque ex se vidêre coortam:
TUM GENUS HUMANUM PRIMUM MOLLESCERE CŒPIT.
——————— puerique parentum
Blanditiis facile ingenium fregere superbum.
Tunc et amicitiam cœperunt jungere habentes
Finitima inter se, nec lædere nec violare.
Et pueros commendârunt muliebreque sêclum
Vocibus et gestu cum balbè significarent
IMBECILLORUM ESSE ÆQUUM MISERIER OMNIUM.[1]
Lucret. lib. v. l. 1010—1022.

(1) Yet when, at length, rude huts they first devis'd,
And fires, and garments; and in union sweet,
Man wedded woman, the pure joys indulg'd
Of chaste connubial love, and children rose,
The rough barbarians soften'd. The warm hearth
Their frames so melted they no more could bear,
As erst, th' uncover'd skies; the nuptial bed
Broke their wild vigor, and the fond caress
Of prattling children from the bosom chas'd
Their stern, ferocious manners. Neighbors now
Join'd in the bonds of friendship, and resolv'd
The softer sex to cherish, and their babes;
And own'd by gestures, signs, and sounds uncouth,
'Twas just the weaklier to protect from harm. — *J. M. Good.*

examine the natural station and duties of the female sex, their condition among different nations, its improvement in Europe, and the bounds which Nature herself has prescribed to the progress of that improvement; beyond which every pretended advance will be a real degradation.

III. Having established the principles of private duty, I shall proceed to consider man under the important relations of subject and sovereign, or, in other words, of citizen and magistrate. The duties which arise from these relations I shall endeavor to establish, not upon supposed compacts, which are altogether chimerical, which must be admitted to be false in fact, which if they are to be considered as fictions, will be found to serve no purpose of just reasoning, and to be equally the foundation of a system of universal despotism in Hobbes, and of universal anarchy in Rousseau; but upon the solid basis of general convenience. Men cannot subsist without society and mutual aid; they can neither maintain social intercourse, nor receive aid from each other, without the protection of government; and they cannot enjoy that protection without submitting to the restraints which a just government imposes. This plain argument establishes the duty of obedience on the part of citizens, and the duty of protection on that of magistrates, on the same foundation with that of every other moral duty; and it shows, with sufficient evidence, that these duties are reciprocal; which directly and fully answers the only rational end for which the fiction of a contract could have been invented. I shall not encumber my reasoning by any speculations on the origin of government; a question

upon which so much reason has been wasted in modern times; but which the ancients[1] in a higher spirit of philosophy have never once deigned to stir. If our principles be just, the origin of government must have been coeval with that of mankind; and as no tribe has ever yet been discovered so brutish as to be without some government, and yet so enlightened as to establish a government by common consent, it is surely unnecessary to employ any serious argument in the confutation of a doctrine inconsistent with reason, and wholly unsupported by experience. But though all inquiries into the origin of government be chimerical, yet the history of its progress is amusing and instructive. The various stages through which it passed from savage independence, which implies every man's power of injuring his neighbor, to legal liberty, which consists in every man's security against wrong; the manner in which a family expands into a tribe, and tribes coalesce into a nation; in which public justice is gradually engrafted on private revenge, and temporary submission ripened into habitual obedience; form a most important and extensive subject of inquiry, which comprehends all the improvements of mankind in police, in judicature, and in legislation.

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[1] The introduction to the first book of Aristotle's Politics is the best demonstration of the necessity of political society to the well-being, and indeed to the very being, of man, with which I am acquainted. Having shown the circumstances which render man necessarily a social being, he justly concludes, "Καὶ ὅτι ἄνθρωπος φύσει πολιτικὸν ζῶον."[1]—*Arist. de Rep.*, lib. i.

The same scheme of philosophy is admirably pursued in the short, but invaluable fragment of the sixth book of Polybius, which describes the history and revolutions of government.

(1) And man is also naturally a political being.

I have already intimated to the reader that the description of liberty which seems to me the most comprehensive, is that of *security against wrong*. Liberty is therefore the object of all government. Men are more free under every government, even the most imperfect, than they would be if it were possible for them to exist without any government at all: they are more secure from wrong, *more undisturbed in the exercise of their natural powers, and therefore more free, even in the most obvious and grossest sense of the word*, than if they were altogether unprotected against injury from each other.[1] But as general security is enjoyed in very different degrees under different governments, those which guard it most perfectly, are, by way of eminence, called *free*. Such governments attain most completely the end which is common to all government. A free constitution of government and a good constitution of government are therefore different expressions for the same idea.

Another material distinction, however, soon presents itself. In most civilized states the subject is tolerably protected against gross injustice from his fellows by impartial laws, which it is the manifest interest of the sovereign to enforce. But some commonwealths are

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[1] I have never pretended to offer this description of liberty as a logical definition. According to my principles, it would be folly to attempt logical definitions of political terms. The simple and original notion of *liberty* is, doubtless, that of the absence of restraint. Now if men are restrained in fewer actions by Government than they would be by violence in the supposed state of nature; if they are always less restrained in proportion as they are more secure; it will follow, that security and liberty must always practically coincide; that the degree of security may always be considered as a test of the degree of liberty, and that for all practical purposes one of these words may constantly be substituted for the other. — *Note to third ed.*

so happy as to be founded on a principle of much more refined and provident wisdom. The subjects of such commonwealths are guarded not only against the injustice of each other, but (as far as human prudence can contrive) against oppression from the magistrate. Such states, like all other extraordinary examples of public or private excellence and happiness, are thinly scattered over the different ages and countries of the world. In them the power of the sovereign is limited with so exact a measure, that his protecting authority is not weakened. Such a combination of skill and fortune is not often to be expected, and indeed never can arise, but from the constant though gradual exertions of wisdom and virtue, to improve a long succession of most favorable circumstances.

There is, indeed, scarce any society so wretched as to be destitute of some sort of weak provision against the injustice of their governors. Religious institutions, favorite prejudices, national manners, have in different countries, with unequal degrees of force, checked or mitigated the exercise of supreme power. The privileges of a powerful nobility, of opulent mercantile communities, of great judicial corporations, have, in some monarchies, approached more near to a control on the sovereign. Means have been devised with more or less wisdom to temper the despotism of an aristocracy over their subjects, and in democracies to protect the minority against the majority, and the whole people against the tyranny of demagogues. But in these unmixed forms of government, as the right of legislation is vested in one individual or in one order, it is obvious that the legislative power may shake off

all the restraints which the laws have imposed on it. All such governments, therefore, tend towards despotism, and the securities which they admit against misgovernment, are extremely feeble and precarious.

The best security which human wisdom can devise, seems to be the distribution of political authority among different individuals and bodies, with separate interests and separate characters, corresponding to the variety of classes of which civil society is composed, each interested to guard their own order from oppression by the rest; each, also, interested to prevent any of the others from seizing on exclusive, and therefore despotic power; and all having a common interest to co-operate in carrying on the ordinary and necessary administration of government. If there were not an interest to resist each other in extraordinary cases, there would not be liberty. If there were not an interest to co-operate in the ordinary course of affairs, there could be no government. The object of such wise institutions which make the selfishness of governors a security against their injustice, is to protect men against wrong both from their rulers and their fellows. Such governments are, with justice, peculiarly and emphatically called *free;* and in ascribing that liberty to the skilful combination of mutual dependence and mutual check, I feel my own conviction greatly strengthened by calling to mind, that in this opinion I agree with all the wise men who have ever deeply considered the principles of politics: with Aristotle and Polybius, with Cicero and Tacitus, with Bacon and Machiavel, with Montesquieu and Hume.[1] It is impossible, in such a

[1] To the weight of these great names let me add the opinion of two illustrious men of the present age, as both their opinions are combined by one of

cursory sketch as the present, even to allude to a very small part of those philosophical principles, political reasonings, and historical facts, which are necessary for the illustration of this momentous subject. In a full discussion of it, I shall be obliged to examine the general frame of the most celebrated governments of ancient and modern times, and especially of those which have been most renowned for their freedom. The result of such an examination will be, that no institution so detestable as an absolutely unbalanced government, perhaps ever existed; that the simple governments are mere creatures of the imagination of theorists, who have transformed names, used for the convenience of arrangement, into real polities; that, as constitutions of government approach more nearly to that unmixed and uncontrolled simplicity, they become despotic; and as they recede farther from that simplicity, they become free.

By the constitution of a state, I mean "*the body of those written and unwritten*[1] *fundamental laws which*

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them in the following passage: "He (Mr. Fox) always thought any of the simple unbalanced governments bad; simple monarchy, simple aristocracy, simple democracy; he held them all imperfect or vicious, all were bad by themselves; the composition alone was good. These had been always his principles, in which he agreed with his friend, Mr. Burke."—*Mr. Fox on the Army Estimates*, 9th Feb. 1790.

In speaking of both these illustrious men, whose names I here join, as they will be joined in fame by posterity, when their temporary differences are forgotten in the recollection of their genius and their friendship, I do not entertain the vain imagination that I can add to their glory by any thing that I can say. But it is a gratification to me to give utterance to my feelings; to express the profound veneration with which I am filled for the memory of the one, and the warm affection which I cherish for the other, whom no one ever heard in public without admiration, or knew in private life without loving.

[1] The reader will observe that I insert this word, "*unwritten*," with a

regulate the most important rights of the higher magistrates, and the most essential privileges[1] *of the subjects.*" Such a body of political laws, must, in all countries, arise out of the character and situation of a people; they must grow with its progress, be adapted to its peculiarities, change with its changes, and be incorporated into its habits. Human wisdom cannot form such a constitution by one act, for human wisdom cannot create the materials of which it is composed. The attempt, always ineffectual, to change by violence the ancient habits of men, and the established order of society, so as to fit them for an absolutely new scheme of government, flows from the most presumptuous ignorance, requires the support of the most ferocious tyranny, and leads to consequences which its authors can never foresee; generally, indeed, to institutions the most opposite to those of which they profess to seek the establishment.[2] But human wisdom, indefatigably employed for remedying abuses, and in seizing favorable opportunities of improving that order of society which arises from causes over which we have

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view to the ignorant and senseless cavils of those who contend that every country which has not a *written constitution*, must be without a constitution.

[1] *Privilege*, in Roman jurisprudence, means the *exemption* of one individual from the operation of a law. Political privileges, in the sense in which I employ the terms, mean those rights of the subjects of a free state, which are deemed so essential to the well-being of the commonwealth, that they are *excepted* from the ordinary discretion of the magistrate, and guarded by the same fundamental laws which secure his authority.

[2] See an admirable passage on this subject in Dr. Smith's Theory of Moral Sentiments, vol. ii. p. 101—112, in which the true doctrine of reformation is laid down with singular ability by that eloquent and philosophical writer. — See also Mr. Burke's speech on economical reform; and Sir M. Hale on the amendment of laws, in the collection of my learned and most excellent friend, Mr. Hargrave, p. 248.

little control, after the reforms and amendments of a series of ages, has, sometimes, though very rarely,[1] shown itself capable of building up a free constitution, which is "the growth of time and nature, rather than the work of human invention."[2] Such a constitution can only be formed by the wise imitation of "*the great innovator*, TIME," — "which, indeed, innovateth greatly, but quietly, and by degrees scarce to be perceived."[3] Without descending to the puerile ostentation of panegyric, upon that of which all mankind confess the excellence, I may observe, with truth and soberness, that a free government not only establishes an universal security against wrong, but that it also cherishes all the noblest powers of the human mind; that it tends to banish both the mean and the ferocious vices; that it improves the national character to which it is

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[1] Pour former un gouvernement modéré, il faut combiner les puissances, les régler, les tempérer, les faire agir, donner pour ainsi dire un lest à l'une pour la mettre en état de résister à une autre, c'est un chef-d'œuvre de législation que le hazard fait rarement, et que rarement on laisse faire à la prudence. Un gouvernement despotique au contraire saute pour ainsi dire aux yeux; il est uniforme partout; comme il ne faut que des passions pour l'établir tout le monde est bon pour cela.[1]— *Montesquieu, De l'Esprit des Loix*, liv. v. c. 14.

[2] I quote this passage from Bishop Shipley's beautiful account of the English Constitution, (Shipley's Works, vol. ii. p. 112,) one of the finest parts of a writer, whose works I cannot help considering as the purest and most faultless model of composition that the present age can boast. Greater vigor and splendor may be found in others; but so perfect a taste, such chaste and modest elegance, it will, I think, be hard to discover in any other English writer of this reign. — *Note to third edition.*

[3] Lord Bacon, Essay xxiv. Of Innovations.

(1) In order to form a prudent government, we must combine its powers, regulate, temper, and put them in action; placing, so to speak, a ballast in one, in order to render it capable of resisting another; it is a *chef d'œuvre* of legislation that chance rarely produces, and one that is rarely formed prudently. A despotic government, on the contrary, is always visible; it is the same everywhere; and since it is established in the affections of men, all the world is adapted to it.

adapted, and out of which it grows; that its whole administration is a practical school of honesty and humanity; in which the social affections, expanded into public spirit, act through a wider sphere and are moved by a more powerful spring.

I shall conclude what I have to offer on government, by an account of the Constitution of England. I shall endeavor to trace the progress of that Constitution by the light of history, of laws, and of records, from the earliest times to the present age; and to show how the general principles of liberty, originally common to it, with the other Gothic monarchies of Europe, but in other countries lost or obscured, were, in this more fortunate island, preserved, matured, and adapted to the progress of civilization. I shall attempt to exhibit this most complicated machine, as our history and our laws show it, in action; and not, as some celebrated writers have most imperfectly represented it, who have torn out a few of its more simple springs, and, putting them together, miscall them the British Constitution. So prevalent, indeed, have these imperfect representations hitherto been, that I will venture to affirm, there is scarcely any subject which has been less treated as it deserved, than the government of England. Philosophers of great and merited reputation[1] have told us that it consisted of certain portions of monarchy, aristocracy and democracy; names which are, in truth, very little applicable, and which, if they were, would as little give an idea of this government,

[2] The reader will perceive that I allude to Montesquieu, whom I never name without reverence, though I shall presume to criticise his account of a government which he only saw at a distance.

as an account of the weight of bone, of flesh, and of blood in a human body, would be a picture of a living man. Nothing but a patient and minute investigation of the practice of the government in all its parts, and through its whole history, can give us just notions on this important subject. If a lawyer, without a philosophical spirit, be unequal to the examination of this great work of liberty and wisdom, still more unequal is a philosopher without practical, legal, and historical knowledge; for the first may want skill, but the second wants materials. The observations of Lord Bacon on political writers, in general, are most applicable to those who have given us systematic descriptions of the English constitution. "All those who have written of governments have written as philosophers, or as lawyers, *and none as statesmen.* As for the philosophers, they make imaginary laws for imaginary commonwealths, and their discourses are as the stars, which give little light because they are so high." — "*Hæc cognitio ad viros civiles propriè pertinet,*"[1] as he tells us in another part of his writings; but, unfortunately, no experienced philosophical British statesman has yet devoted his leisure to a delineation of the constitution, which such a statesman alone can practically and perfectly know.

In the discussion of this great subject, and in all reasonings on the principles of politics, I shall labor, above all things, to avoid that which appears to me to have been the constant source of political error: I mean the attempt to give an air of system, of simpli-

(1) This knowledge belongs more properly to politicians.

city, and of rigorous demonstration, to subjects which do not admit them. The only means by which this could be done, was by referring to a few simple causes, what, in truth, arose from immense and intricate combinations, and successions of causes. The consequence was very obvious. The system of the theorist, disencumbered from all regard to the real nature of things, easily assumed an air of speciousness. It required little dexterity to make his argument appear conclusive. But all men agreed that it was utterly inapplicable to human affairs. The theorist railed at the folly of the world, instead of confessing his own; and the men of practice unjustly blamed philosophy, instead of condemning the sophist. The reason of this constant war between speculation and practice, it is not difficult to discover. It arises from the very nature of political science. The causes which the politician has to consider, are, above all others, multiplied, complicated, minute, subtile, and, if I may so speak, evanescent; perpetually changing their form, and varying their combinations; losing their nature, while they keep their name; exhibiting the most different consequences in the endless diversity of men and nations on whom they operate; in one degree of strength producing the most signal benefit; and, under an apparently slight variation of circumstances, the most tremendous mischiefs. They admit, indeed, of being reduced to theory; but to a theory formed on the most extensive views, of the most comprehensive and flexible principles, so as to embrace all their varieties, and to fit all their rapid transmigrations; a theory, of which the most fundamental maxim is, distrust in

itself, and deference for practical prudence. Only two writers of former times have, as far as I know, observed this general defect of political reasoners; but these two are the greatest philosophers who have ever appeared in the world. The first of them is Aristotle, who, in a passage of his Politics,[1] to which I cannot at this moment turn, plainly condemns the pursuit of a delusive geometrical accuracy in moral reasonings as the constant source of the grossest error. The second is Lord Bacon, who tells us, with that authority of conscious wisdom which belongs to him, and with

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[1] I have since discovered the passage or rather passages of Aristotle to which I alluded; I have collected several of these passages from various parts of his writings, that the reader may see the anxiety of that great philosopher to inculcate, even at the expense of repetition, the absurdity of every attempt to cultivate or teach moral philosophy with a geometrical exactness, which, in the vain pursuit of an accuracy which never can be more than *apparent*, betrays the inquirer into real, innumerable, and most mischievous fallacies:

Περι μεν ουν των πολιτευομενων, ποσοις τε υπαρχειν δει, και ποιοις τινας την φυσιν; ειπι δε την χωραν ποσην τε τινα και ποιαν διωρισαι σχεδον: ου γαρ την αυτην ακριβειαν δει ζητειν δια τε των λογων και των γιγνομενων δια της αισθησεως.—*Arist. de Repub.* lib. vii., cap. 7, in fine.

Την δε ακριβολογιαν την μαθηματικην ουκ εν απασιν απαιτητεον αλλ' εν τοις μη εχουσιν ὑλης. — *Metaphys.* lib. ii. cap. ult.[2]

Πεπαιδευμενοι γαρ εισιν επι τοσουτον τα κρειττω επιζητειν και δ' ἑκαστον γενος εφ' ὁσον ἡ τω πραγματος φυσις επιδεχεται: παραπλησιον γαρ φαινεται μαθηματικω τε πιθανολογουντος αποδεχεσθαι και ῥητορικον αποδειξεις απαιτειν. — *Ethic. ad Nichom.* lib. i. cap. 1.

In the first of these remarkable passages, he contradistinguishes morality from the physical sciences; in the second, from the abstract sciences. The distinction, though of a different nature, is equally great in both cases. Morality can neither attain the *particularity* of the sciences which are conversant with external nature, nor the *simplicity* of those, which, because they are founded on a few elementary principles, admit of rigorous demonstration; but this is a subject which would require a long dissertation. I am satisfied with laying before the reader the authority and the reasoning of Aristotle.

(2) Compare this passage with that which is quoted in the next page from Lord Bacon.

that power of richly adorned truth from the wardrobe of genius, which he possessed above *almost* all men, "Civil knowledge is conversant about a subject which, above all others, is most immersed in matter, and hardliest reduced to axiom."[1]

IV. I shall next endeavor to lay open the general principles of civil and criminal laws. On this subject, I may, with some confidence, hope that I shall be enabled to reason better by my acquaintance with the laws of my own country, which it is the business of my life to practise, and of which the study, has, by habit, become my favorite pursuit.

The first principles of jurisprudence are simple maxims of reason, of which the observance, as we know by immediate experience, is essential to the security of men's rights, and which pervade the laws of all countries. An account of the gradual application of these original principles, first, to more simple, and afterwards to more complicated cases, forms both the history and the theory of law. Such an historical account of the progress of men, in reducing justice to an applicable and practical system, will enable us

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[1] This principle is expressed by a writer of a very different character from these two great philosophers; a writer, "*qu'on n'appellera plus philosophe, mais qu'on appellera le plus éloquent des sophistes*,"[1] with great force, and, as his manner is, with some exaggeration:

"Il n'y a point de principes abstraits dans la politique. C'est une science des calculs, des combinaisons, et des exceptions, selon les lieux, les temps et les circonstances."[2] — *Lettre de Rousseau au Marquis de Mirabeau.*

The second proposition is true; but the first is not a just inference from it.

(1) That we cannot call more philosophic, but we may call the most eloquent of the sophists.

(2) There are no abstract principles in politics. It is a science of calculations, of combinations, and of exceptions, according to places, times, and circumstances. *Letter of Rousseau to the Marquis de Mirabeau.*

to trace that chain, in which so many breaks and interruptions are perceived by superficial observers, but which, in truth, inseparably, though with many dark and hidden windings, links together the security of life and property with the most minute and apparently frivolous formalities of legal proceeding. We shall perceive that no human foresight is sufficient to establish such a system at once, and that, if it were so established, the occurrence of unforeseen cases would shortly altogether change it; that there is but one way of forming a civil code, either consistent with common sense, or that has ever been practised in any country, namely, that of gradually building up the law in proportion as the facts arise which it is to regulate. We shall learn to appreciate the merit of vulgar objections against the subtlety and complexity of laws. We shall estimate the good sense and the gratitude of those who reproach lawyers for employing all the powers of their mind to discover subtle distinctions for the prevention of injustice;[1] and we shall at once perceive that laws ought to be neither more *simple* nor more *complex* than the state of society which they are to govern, but that they ought exactly to correspond to it. Of the two faults, however, the excess of simplicity would certainly be the greatest; for laws, more complex than are necessary, would only produce embarrassment; whereas laws more simple than the affairs which they regulate, would occasion a defect of justice. More

[1] The casuistical subtleties are not perhaps greater than the subtleties of lawyers; *but the latter are innocent, and even necessary.* — *Hume's Essays*, vol. ii., p. 558.

understanding[1] has, perhaps, been in this manner exerted to fix the rules of life, than in any other science; and it is certainly the most honorable occupation of the understanding, because it is the most immediately subservient to general safety and comfort. There is not, in my opinion, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence; where we may contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages; withdrawing every case as it arises from the dangerous power of discretion, and subjecting it to inflexible rules; extending the dominion of justice and reason, and gradually contracting, within the narrowest possible limits, the domain of brutal force and of arbitrary will. This subject has been treated with such dignity, by a writer who is admired by all mankind for his eloquence, but who is, if possible, still more admired by all competent judges for his philosophy; a writer, of whom I may justly say, that he was "*gravissimus et dicendi et intelligendi auctor et magister*,"[2] that I cannot refuse myself the gratification of quoting his words: — "The science of jurisprudence, the pride of the human intellect, which, with all its defects, redundancies, and errors, is the collected reason of ages

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[1] "Law," said Dr. Johnson, "is the science in which the greatest powers of understanding are applied to the greatest number of facts." Nobody, who is acquainted with the variety and multiplicity of the subjects of jurisprudence, and with the prodigious powers of discrimination employed upon them, can doubt the truth of this observation.

(2) The profoundest of thinkers, and the most eloquent of orators.

combining the principles of original justice with the infinite variety of human concerns."[1]

I shall exemplify the progress of law, and illustrate those principles of universal justice on which it is founded, by a comparative review of the two greatest civil codes that have been hitherto formed — those of Rome[2] and of England;[3] of their agreements and disagreements, both in general provisions, and in some of the most important parts of their minute practice. In this part of the course, which I mean to pursue with such detail as to give a view of both codes, that may, perhaps, be sufficient for the purposes of the general student,[4] I hope to convince him that the laws of civilized nations, particularly those of his own, are a subject most worthy of scientific curiosity; that

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[1] Burke's Works, vol. iii., p. 134.

[2] It may, perhaps, not be disagreeable to the reader to find here the passage of LEIBNITZ, to which I have referred in the former editions of the Discourse. "Cæteroquin ego Digestorum Opus vel potius auctorum unde excerpta sunt labores admiror, nec quidquam vidi sive rationum pondere sive dicendi nervos spectes quod magis accedat ad mathematicorum laudem."[1]— *Leibnitz, Op.* vol. iv., p. 254.

[3] On the intimate connection of these codes, let us hear the words of Lord Holt, whose name never can be pronounced without veneration, as long as wisdom and integrity are revered among men: — "Inasmuch *as the laws of all nations are doubtless raised out of the ruins of the civil law*, as all governments are sprung out of the ruins of the Roman empire, it must be owned *that the principles of our law are borrowed from the civil law*, therefore grounded upon the same reason in many things." — 12 *Mod.* 482.

[4] On a closer examination, this part of my scheme has proved impracticable in the extent which I have here proposed, and within the short time to which I am necessarily confined. A general view of the principles of law, with some illustrations from the English and Roman codes, is all that I can compass.

(1) Besides, I greatly admire the Digests, or rather the skill of the authors in composing them; nor have I ever seen any thing, for force of reasoning or strength of expression, that approaches so near, as they do, to the precision of mathematics.

principle and system run through them even to the minutest particular, as really, though not so apparently, as in other sciences, and are applied to purposes more important than in any other science. Will it be presumptuous to express a hope, that such an inquiry may not be altogether an useless introduction to that larger and more detailed study of the law of England, which is the duty of those who are to profess and practise that law?

In considering the important subject of criminal law, it will be my duty to found, on a regard to the general safety, the right of the magistrate to inflict punishments, even the most severe, if that safety cannot be effectually protected by the example of inferior punishments. It will be a more agreeable part of my office to explain the temperaments which Wisdom, as well as Humanity, prescribes in the exercise of that harsh right, unfortunately so essential to the preservation of human society. I shall collate the penal codes of different nations, and gather together the most accurate statement of the result of experience with respect to the efficacy of lenient and severe punishments; and I shall endeavor to ascertain the principles on which must be founded both the proportion and the appropriation of penalties to crimes.

As to the *law of criminal proceeding*,[1] my labor will be very easy; for on that subject an English lawyer, if he were to delineate the model of perfection, would find, that, with few exceptions, he had transcribed the

[1] By the "*Law of criminal proceeding*," I mean those laws which regulate the *trial* of men accused of crimes, as distinguished from *penal law*, which fixes the *punishment* of crimes.

institutions of his own country. The whole subject of my lectures, of which I have now given the outline, may be summed up in the words of Cicero: — "Natura enim juris explicanda est nobis, eaque ab hominis repetenda naturâ; considerandæ leges, quibus civitates regi debeant; tum hæc tractanda quæ composita sunt et descripta, jura et jussa populorum; in quibus NE NOSTRI QUIDEM POPULI LATEBUNT QUÆ VOCANTUR JURA CIVILIA."[1] — *Cic. de Leg.* lib. i. c. 5.

V. The next great division of the subject is the law of nations, strictly and properly so called. I have already hinted at the general principles on which this law is founded. They, like all the principles of natural jurisprudence, have been more happily cultivated, and more generally obeyed, in some ages and countries than in others; and, like them, are susceptible of great variety in their application, from the character and usages of nations. I shall consider these principles in the gradation of those which are necessary to any tolerable intercourse between nations: those which are essential to all well regulated and mutually advantageous intercourse; and those which are highly conducive to the preservation of a mild and friendly intercourse between civilized states. Of the first class, every understanding acknowledges the necessity, and some traces of a faint reverence for them are discovered even among the most barbarous tribes; of the second, every well-informed man perceives the im-

(1) I am to explain the nature of law, and that must be sought for in the constitution of man. The laws by which states ought to be governed, must firstly be considered; then the parts of which they are composed; and the description of them are to be spoken of, viz. the laws and customs of the people; among which are those of the Romans, called civil laws, that shall not be passed over in silence.

portant use, and they have generally been respected by all polished nations; of the third, the great benefit may be read in the history of modern Europe, where alone they have been carried to their full perfection. In unfolding the first and second class of principles, I shall naturally be led to give an account of that law of nations, which, in greater or less perfection, regulated the intercourse of savages, of the Asiatic empires, and of the ancient republics. The third brings me to the consideration of the law of nations, as it is now acknowledged in Christendom. From the great extent of the subject, and the particularity to which, for reasons already given, I must here descend, it is impossible for me, within any moderate compass, to give even an outline of this part of the course. It comprehends, as every reader will perceive, the principles of national independence, the intercourse of nations in peace, the privileges of ambassadors and inferior ministers, the commerce of private subjects, the grounds of just war, the mutual duties of belligerent and neutral powers, the limits of lawful hostility, the rights of conquest, the faith to be observed in warfare, the force of an armistice, of safe conducts and passports, the nature and obligation of alliances, the means of negotiation, and the authority and interpretation of treaties of peace. All these, and many other most important and complicated subjects, with all the variety of moral reasoning, and historical examples, which is necessary to illustrate them, must be fully examined in this part of the lectures, in which I shall endeavor to put together a tolerably complete practical system of the law of nations, as it has for the last two centuries been recognised in Europe.

"*Le droit des gens* est naturellement fondé sur ce principe ; que les diverses nations doivent se faire, dans la paix, le plus de bien, et dans la guerre le moins de mal, qu'il est possible, sans nuire à leurs véritables intérêts.

"L'objet de la guerre c'est la victoire ; celui de la victoire la conquête ; celui de la conquête la conservation. De ce principe et du précédent, doivent dériver toutes les loix qui forment *le droit des gens.*

"Toutes les nations ont un droit des gens ; les *Iroquois* même qui mangent leur prisonniers en ont un. Ils envoient et reçoivent des embassades ; ils connoissent les droits de la guerre et de la paix : le mal est que ce droit des gens n'est pas fondé sur les vrais principes."[1] — *De l'Esprit des Loix*, liv. i. c. 3.

VI. As an important supplement to the practical system of our modern law of nations, or rather as a necessary part of it, I shall conclude with a survey of the *diplomatic and conventional law of Europe ;* of the treaties which have materially affected the distribution of power and territory among the European states ; the circumstances which gave rise to them, the changes which they effected, and the principles which they introduced into the public code of the Christian commonwealth. In ancient times, the knowledge of this

(1) International law is naturally founded on this principle, that different nations ought, in time of peace, to do one another all the good they can ; and in time of war as little injury as possible, without prejudice to their real interest.

The object of war, is victory ; that of victory, conquest ; and that of conquest, preservation. From this, and the preceding principle, all the laws which form international law are derived.

All countries have international laws, even the Iroquoise themselves, who devour their prisoners. They send and receive ambassadors, and understand the rights of war and peace. The difficulty, however, in their international law is, that it is not founded upon true principles.

conventional law was thought one of the greatest praises that could be bestowed on a name loaded with all the honors that eminence in the arts of peace and war can confer.

"Equidem existimo, judices, cum in omni genere ac varietate artium, etiam illarum, quæ sine summo otio non facile discuntur, Cn. Pompeius excellat, singularem quandam laudem ejus et præstabilem esse scientiam, *in fœderibus, pactionibus, conditionibus populorum, regum, exterarum nationum:* in universo denique belli jure ac pacis."[1] — *Cic. Orat. pro L. Corn. Balbo*, c. 6.

Information on this subject is scattered over an immense variety of voluminous compilations; not accessible to every one, and of which the perusal can be agreeable only to very few. Yet so much of these treaties has been embodied into the general law of Europe, that no man can be master of it who is not acquainted with them. The knowledge of them is necessary to negotiators and statesmen; it may sometimes be important to private men in various situations in which they may be placed; it is useful to all men who wish either to be acquainted with modern history, or to form a sound judgment on political measures. I shall endeavor to give such an abstract of it as may be sufficient for some, and a convenient guide for others in the farther progress of their studies. The treaties, which I shall more particularly consider, will

(1) Indeed I think, Judges, since in every kind and variety of the arts, even those which are not easily learned without the greatest leisure, Cneius Pompeius excelled, and he was pre-eminently skilled in, and is to be praised for his knowledge of constitutions, stipulations, and treaties of nations, both foreign and domestic; and was, in short, well versed in every thing pertaining to the laws of war and peace.

be those of Westphalia, of Oliva, of the Pyrenees, of Breda, of Nimeguen, of Ryswick, of Utrecht, of Aix-la-Chapelle, of Paris (1763), and of Versailles (1783). I shall shortly explain the other treaties, of which the stipulations are either alluded to, confirmed, or abrogated in those which I consider at length. I shall subjoin an account of the diplomatic intercourse of the European powers with the Ottoman Porte, and with other princes and states who are without the pale of our ordinary federal law; together with a view of the most important treaties of commerce, their principles, and their consequences.

As an useful appendix to a practical treatise on the law of nations, some account will be given of those tribunals, which in different countries of Europe, decide controversies arising out of that law; of their constitution, of the extent of their authority, and of their modes of proceeding; more especially of those courts which are peculiarly appointed for that purpose by the laws of Great Britain.

Though the course, of which I have sketched the outline, may seem to comprehend so great a variety of miscellaneous subjects, yet they are all, in reality, closely and inseparably interwoven. The duties of men, of subjects, of princes, of lawgivers, of magistrates, and of states, are all of them parts of one consistent system of universal morality. Between the most abstract and elementary maxim of moral philosophy, and the most complicated controversies of civil or public law, there subsists a connection which it will be the main object of these lectures to trace. The

Note. — The text, from which the preceding Discourse is printed, is that of the third London edition, which was corrected and enlarged by the Author, and which is thus rendered more valuable than any previous edition.